15-140 Judge Davis

Judge Davis
Dunlap

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~402.~~ 4429

WILLIAM C. PICKERSGILL, APPELLANT,

vs.

LOUIS EMILI LAHENS, JOHN BINNSSE, EXECUTOR, AND LOUISIA JONES, EXECUTRIX, OF JOHN LAFARGE, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED DECEMBER 14, 1870.

Dec. 2, 1870

SUPREME COURT OF THE UNITED STATES.

No. 402.

WILLIAM C. PICKERSGILL, APPELLANT,

vs.

LOUIS EMILI LAHENS, JOHN BINNSSE, EXECUTOR, AND LOUISIA JONES, EXECUTRIX, OF JOHN LAFARGE, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 The President of the United States of America to Louis Emile Lahens, Louisa Jones, executrix of the last will and testament of John Lafarge, deceased, & John Binsse, executor of the last will and testament of John Lafarge, deceased:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, in equity, on the first Monday of October, A. D. 1868, wheresoever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by Thomas Fielden & William C. Pickersgill, and to do further and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 29th day of
2 August, in the year one thousand eight hundred and sixty-eight, and of the independence of the United States of America the ninety-third.

KENNETH G. WHITE,
Clerk.

BOWDOIN, LAROCQUE & BARLOW,
Sol'rs.

The defendants are required to enter appearance in the above cause in the clerk's office of this court, on or before the first Monday of October, 1868, or the bill will be taken pro confesso against them.

K. G. W., *Clerk.*

(Endorsed:)

Personally served on the within-named defendants L. E. Lahens and Louisa Jones, other not found.

J. MURRAY,
U. S. Marshal.

Sept. 18, 1868.

I depute E. M. Litherell to execute the within process.

J. MURRAY,
U. S. Marshal.

Filed Sept. 19, '68.
E 180.

3 *Duplicate.*

The President of the United States of America to Louis Emile Lahens, Louisa Jones, executrix of the last will & testament of John Lafarge, deceased, and John Binsse, executor of the last will and testament of John Lafarge deceased:

You are hereby commanded that you, and each of you, personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, in equity, on the first Monday of October, A. D. 1868, wheresoever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by Thomas Fielding and William C. Pickersgill, and to do further and receive what the said court shall have considered in that behalf, and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 20th
4 day of August, in the year one thousand eight hundred and sixty-eight, and of the independence of the United States of America the ninety-third.

KENNETH G. WHITE,
Clerk.

BOWDOIN, LAROCQUE & BARLOW, *Sol'rs.*

The defendants are required to enter appearance in the above cause, in the clerk's office of this court, on or before the first Monday of October, 1868, or the bill will be taken pro confesso against them.

K. G. W., *Clerk.*

(Endorsed:)

U. S. circuit court. Thomas Fielding et al. against Louis E. Lahens & John Binsse, & an'r, ex'rs, &c. Copy writ of subpœna.

The within is a true copy of a writ served out of the circuit court of the United States for the southern district of New York.

N. Y., Aug't 20, '68.

KENNETH G. WHITE,
Clerk.

On the 25th day of August, 1868, I personally served the within upon John Binsse at Pamelia, by showing him the same, with the seal of the court attached, and at the same time leaving with him a copy of the same.

EDWARD DODD,
U. S. Marshall, D. N. Y.
By JOHN H. NAPIER,
Deputy.

Filed Sept. 8, 1868.

5 In the circuit court of the United States for the southern district of New York.

To the judges of the circuit court of the United States for the southern district of New York:

Thomas Fielden and William C. Pickersgill, of Liverpool, England, aliens and subjects of Her Majesty, the Queen of Great Britain and Ireland, surviving partners of the late firm, consisting of Thomas Fielden, Daniel Campbell, Joshua Fielden, John Fielden, James Fielden, and William C. Pickersgill, and lately doing business as merchants and copartners at Liverpool in the kingdom of Great Britain, under the name, firm, and style of Fielden Brothers and Company, and at the city of New York under the name, firm, and style of W. C. Pickersgill & Company, bring this their bill of complaint against Louis Emile Lahens, of Westchester County, in the State of New York, Louisa Jones, formerly Louisa Lafarge, and widow of John Lafarge, deceased, also of said Westchester County, as she is executrix of the last will and testa-
6 ment of John Lafarge, late of the city, county, and State of New York, deceased, and John Binsse, of Watertown, in the county of Jefferson, in said State, as he is executor of the said last will and testament of the said John Lafarge, deceased, citizens of the United States and of the State of New York, the said Louisa Emile Lahens and the

said Louisa Jones being inhabitants of the southern district of New York and the said John Binsse being an inhabitant of the northern district of New York, and thereupon your orators complain and say:

That heretofore, to wit, on the twenty-fifth day of May, one thousand eight hundred and forty-four, one Alexander Casselli, then of the city, county, and State of New York, a merchant, made his three promissory notes, as follows: All had dates the day and year last above mentioned, and all were made payable to the order of J. Lahens & Company, a firm or copartnership consisting of Pierre F. Lahens, Augustin Edward Gaudard, Louis Emile Lahens, and Edward Ernest Lahens, then
7 merchans and copartners carrying on buisiness as commission merchants, both at Havre, in France, and in the city of New York, and carrying on business at the last-mentioned place under the firm-name of J. Lahens and Company. One was for the sum of fourteen thousand dollars, and was payable sixty days after date; one was for the sum of thirteen thousand five hundred dollars, and was payable ninety days after date; and the other was for the sum of twenty-one thousand two hundred and twenty-one dollars and forty-three cents, and was also payable ninety days after date. The said Alexander Casselli procured all of said notes to be endorsed by the said Louis Emile Lahens in and by the firm-name of J. Lahens *in and by the firm-name of J. Lahens* & Company, and subsequently and before maturity the said Casselli delivered the said notes so endorsed to the said firm of Wm. C. Pickersgill & Co.

Your orators further show to your honors that afterwards, on or about the twenty-fifth day of July, one thousand eight hundred and
8 forty-four, the said firm of J. Lahens & Company (for the sake of brevity all the parties composing said firm being under and herein designated by said firm-name) filed a bill in the court of chancery of the State of New York against the said firm of William C. Pickersgill and Company, (all the parties composing said firm being also for the sake of brevity herein designated by said firm-name,) praying among other things and for the reasons in said bill stated for a decree directing the cancellation of their endorsement on said three promissory notes, and for an injunction restraining the negotiation of said notes or the bringing of any action or actions at law thereon, in which said suit the said W. C. Pickersgill and Company duly appeared and severally filed their answers to said bill.

Your orators further show to your honors that afterwards, on or about the twenty-first day of October, in the year one thousand eight hundred and forty-four, the said William C. Pickersgill and Company commenced a personal action in the superior court of the city of New York
9 against the said J. Lahens and Company on the said three promissory notes so endorsed by them as aforesaid, to recover the amount thereof.

The defendants appeared in said action to defend the same, and on the twentieth day of November, in the year one thousand eight hundred and fourty-four, filed a plea of the general issue to the same, together with a notice of certain special matters of defence.

The said cause, being thus at issue, was continued in the said superior court, and various proceedings had therein, until final judgment was rendered therein, as hereinafter stated, all of which will fully and at large appear by the record in said action, a copy of which is hereto annexed, marked Exhibit "A," and which your orators pray may be taken as part of this their bill, with leave to refer thereto as often as occasion may require.

Your orators further show to your honors that afterwards, on or about the twentieth day of April, one thousand eight hundred and forty-six, while said action was pending in said superior court, and while said
10 suit was pending in said court of chancery, the complainants in said last-mentioned suit applied in the said court of chancery for an injunction to stay the trial of said action in said superior court, and the said court of chancery, before granting the said application, required the complainants to file with the clerk of the court a certain bond to the defendants in said suit in chancery, and thereupon the said complainants prepared and caused to be executed the bond hereinafter referred to and set out at length, and the said court having examined the said bond and approved the same, granted an order and injunction staying the trial of said action at law, until the answers of the said defendants in the said suit in chancery to the exceptions taken by the complainants to their former answers should be perfected; a copy of the said order and injunction is hereunto annexed marked Exhibit "B." And your orators pray that the same may be taken as part of this bill, with liberty to refer thereto as often as occasion may require.

The said bond was and is the joint bond of the said Louis Emile Lahens and John Lafarge, then of the city of *the city of* New York,
11 and in full life, but since deceased. The same was duly filed, as ordered by said court of chancery, with the clerk of said court, and was and is of the following tenor, that is to say:

"Know all men by these presents, that we, Louis Emile Lahens, of the city of New York, one of the complainants in the suit in chancery hereinafter mentioned, and John Lafarge, of the said city of New York, gentlemen, are held and firmly bound unto Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill, the defendants in the said suit in chancery, in the sum of sixty thousand dollars lawful money of the United States of America, to be paid to the said Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill, and their legal representatives, for which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, dated the twenty-third day of April, in the year of our Lord one thousand eight hundred and forty-six.
12 Whereas a personal action is now pending and at issue in the superior court of the city of New York, between the said Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill as plaintiffs, and Pierre F. Lahens, Augustin Edward Goudard, the said Louis Emile Lahens, and Edward Ernest Lahens as defendants:

"And whereas, a bill has been filed in the court of chancery of the State of New York, before the vice-chancellor of the first circuit, in which the said Pierre F. Lahens, Augustus Edward Goudard, Louis Emile Lahens, and Edward Ernest Lahens are complainants, and the said Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill are defendants, in which said last mentioned suit it hath been ordered by the said court of chancery, before the said vice-chancellor of the first circuit, on the application of the said Louis Emile Lahens, that upon the filing of these presents, duly executed, with the clerk of the said court of chan-
13 cery, an injunction shall be issued to stay the trial of the aforesaid personal action in the said superior court of the city of New York:

"Now, therefore, the condition of this obligation is such that if the above-bounden Louis Emile Lahens and John Lafarge, their heirs, executors, or administrators shall well and truly pay or cause to be paid to the said Joshua Fielden, James Fielden, John Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill or to their legal representatives, all moneys which may be recovered by the said Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill, or to their representatives, or the collection of which may be stayed by such injunction in the aforesaid action at law in the superior court of the city of New York for debt or damages, and for costs therein, and shall also well and truly pay or cause to be paid to the said Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill, or to their legal representatives, such costs as may be awarded to them in the said court of chancery in the said suit in which the said
14 injunction shall issue, then and in that case the above obligation to be void; otherwise to be and remain in full force and virtue.

"L. A. LAHENS. [L. S.]
"JOHN LA FARGE. [L. S.]

"Sealed and delivered in the presence of, in the 10th line, 1st page, the words "seventy-six" being erased and the word five substituted—

"FRA'C'S DOMINICK.

"CITY AND COUNTY OF NEW YORK, *ss:*

"On the twent*ieth*-fourth day of April, one thousand eight hundred and forty-six, before me came Francis Dominick, known to me to be the same person who is the subscribing witness to the above instrument, and the said Francis Dominick being by me duly sworn did depose and *and* say, that he resides in the city of New York, and that in his presence Louis E. Lahens and John La Forge, known to him to be the same persons described in and who executed the said instrument did duly sign their names thereto, and did duly acknowledge that they executed the same, and that he, the deponent subscribed his name as a witness thereto.

(S'd.) "JOSEPH STRONG,
"*Commissioner of Deeds.*"

(Endorsed:)

"I approve of the form and manner of execution of the within bond, and of the sufficiency of the surety therein, his justification being waved by the consent annexed.

"W'M F. McCONN, *V. C.*

"April 25, 1846.

15 "In chancery, before the vice-chancellor.

"PIERRE F. LAHENS ET AL.
vs.
JOSHUA FIELDEN ET AL.

"I hereby waive the justification of John La Farge on the bond given in this cause, and dated yesterday, New York, April 24th, 1846.

"F. GRIFFIN,
"*Def't's Sol'r.*"

(Filed April 25, 1846.)

And the said bond duly executed is here in court ready to be produced and proved as the court shall direct, and to which your orators more particularly refer.

Your orators further show to your honors that the trial of said action at law was stayed by the said order and injunction until the said answers to the said exceptions were perfected, to wit, till about the eighteenth day of December, one thousand eight hundred and forty-seven, when the same by the terms thereof expired and was dissolved, and afterwards, on the twenty-third day of December, one thousand eight
16 hundred and forty-seven, the said complainants made application in said court of chancery on certain affidavits and proofs (copies of which are hereunto annexed marked Exhibit "C," and which your orators pray may be taken as part of this their bill, with leave to refer thereto as often as occasion may require) for an order reviving an injunction staying and restraining the trial of said cause, which was originally granted in said cause, in the year one thousand eight hundred and forty-four, which application was denied. Afterwards, on the twenty-seventh day of June, one thousand eight hundred and fifty-nine, an order was made by the supreme court of the State of New York, for the city and county of New York, to which said court said suit in chancery has been duly transferred, dismissing the same for want of prosecution, which order was subsequently affirmed on appeal by the court of appeals of said State.

Your orator further shew to your honors that the said action at law was continued in said superior court, and various proceedings were had and orders made from time to time therein until on or about the
17 twenty-second day of October, one thousand eight hundred and sixty-one, when in the said superior court, on the report of referees to whom the same had theretofore been referred by said court, judgment therein was rendered in favor of the surviving defendants against the surviving plaintiffs.

From this judgment an appeal was duly taken by the said surviving plaintiffs, *From this judgment an appeal was duly taken by the said surviving plaintiffs* to the then next general term of the said superior court, by which last mentioned court said judgment was affirmed, and from this last judgment an appeal was duly taken to the court of appeals of the State of New York, which last mentioned court on or about the ninth day of October, one thousand eight hundred and sixty-seven, did order and adjudge that the said judgment of the said superior court in favor of the defendants, Pierre F. Lahens and Edward E. Lahens, be in all things affirmed, and did further order and adjudge that the judgment of the said superior court in favor of the said defendant Louis E. Lahens be reversed, annulled, and altogether held for nothing, and
18 that a new trial be ordered, and thereupon the proceedings in the said court of appeals were duly remitted to the said superior court.

Afterwards, to wit, on the twenty-fifth day of October, one thousand eight hundred and sixty-seven, the said judgment of the court of appeals in said cause was duly made the judgment of the said superior court.

Your orator further show to your honors that afterwards, on the twenty-third day of December, one thousand eight hundred and sixty, seven, the said superior court ordered that the said action should proceed and continue in the names of Thomas Fielden and William C. Pickersgill, survivors of Joshua Fielden, John Fielden, James Fielden and Daniel Campbell as plaintiffs against said Louis E. Lahens as defendant, and also made an order referring the said cause to the Honor-

able Theron R. Strong, of the city of New York, counsellor-at-law, to hear and determine the same; and afterwards, said cause was duly heard and determined by the said referee, who made his report to the
19 said superior court on the sixteenth day of April, one thousand eight hundred and sixty-eight, and did report among other things that the said surviving plaintiffs were entitled to judgment against the said defendant, Louis Emile Lahens, for the sum of one hundred and twenty nine thousand four hundred and twenty-nine dollars and fifty-two cents, ($129,429 52,) and for the costs of the said action, and did order judgment accordingly, and said surviving plaintiffs having duly waived their right to, and remitted the costs of, said action, on the seventeenth day of April, one thousand eight hundred and sixty-eight, final judgment for the said sum of one hundred and twenty-nine thousand four hundred and twenty-nine dollars and fifty-two cents was duly entered in said action in the said superior court in favor of the said surviving plaintiffs, Thomas Fielden and William C. Pickersgill, against the said defendant, Louis Emile Lahens, and that execution on said judgment was duly applied for and issued against the said Louis Emile Lahens on the twenty-fifth day of July, one thousand eight hundred and sixty-eight, and
20 placed in the hands of the sheriff of the county of Westchester, who, on or about the fifth day of August, one thousand eight, returned the same wholly unsatisfied.

Your orator further show to your honors that upon the recovery of final judgment in said action the amount of money specified in the said bond became, according to the tenor thereof, due and payable to your orators.

That before the said seventeenth day of April, one thousand eight hundred and sixty-eight, the date when final judgment in said action was recovered as aforesaid, the said Louis Emile Lahens had become and then was wholly insolvent, and had before that time filed his petition in bankruptcy, under the laws of the United States, in the district court of the United States for the southern district of New York, praying for a discharge from all his debts, which petition is still pending in said court.

Your orators further show to your honors that before said final judgment was recovered, to wit, on or about the twent*ieth*-fifth day of
21 June, one thousand eight hundred and fifty-eight, the said John Lafarge, deceased, leaving a last will and testament, which was duly admitted to probate and proved, in and by which the said defendant, Louisa Jones, then Louisa Lafarge and widow of said John Lafarge, was appointed executrix thereof, and the said defendant, John Binsse, was appointed executor thereof. That the said executrix and executor severally accepted said trust, duly qualified, and entered upon the performance of their duties as such executrix and executor, and as such are now engaged in administering and settling the estate of the said John Lafarge, and have in their hands, as your orators are informed and believe, assetts belonging to said estate to an amount much greater than the amount of said bond, over and above all the liabilities of said estate and debts and charges against the same.

Your orators further show to your honors that, the premises considered, it became, and was, and is the duty of the said executrix and executor to pay to your orators the amount of said bond with interest
22 thereon from the time said final judgment was rendered out of the assetts of the said estate of John Lafarge, deceased, and that heretofore, to wit, on the tenth day of June, one thousand eight hundred and sixty-eight, your orator presented to the said executrix and executor a

claim founded on said bond, and for the amount of money specified therein, and demanded payment thereof out of the assetts of said estate, but they the said executor and executrix wrongfully neglected and refused to pay the said claim, and on the ninth day of July, one thousand eight hundred and sixty-eight, gave notice in writing to your orators that they wholly rejected said claim, and declined to pay the same.

Your orator show that on or about the thirty-first day of January, one thousand eight hundred and fifty-nine, the said executor and executrix gave public notice to all persons having claims against the said John Lafarge, deceased, to present the same to Charles Edwards at his
23 office, No. 25 Pine street, in the city of New York, on or before the eighth day of August then next, and in pursuance of such notice your orators caused to be presented to the said Charles Edwards at his said office on the fourteenth day of June, one thousand eight hundred and fifty-nine, a notice in writing of the existence of the aforesaid bond, and of the pendency of said action at law referred to in said bond, and that your orators would claim to recover of the said executor and executrix of the said John Lafarge, deceased, the amount of the judgment that might be recovered in said action. And on the sixteenth day of June, one thousand eight hundred and fifty-nine, caused like notice in writing to be given to the said executor, and to the said executrix personally.

In consideration whereof, and forasmuch as your orators are remediless in the premises by the strict rules of the common law, and cannot have adequate relief except by the aid and interposition of this kind are properly cognizable and releivable: To the end, therefore, that the said Louis Emile Lahens, Louisa Jones, executrix, and John
24 Binsse, executor, may upon their several and respective corporal oaths, full, true, direct, and perfect answer make to all and singular the matters herein above stated and charged as fully and particularly as if they were thereunto particularly interrogated, and that the sum due on said bond may be decreed to be a proper charge against the said estate in favor of your orators, and they, the said Louisa Jones, executrix, and John Binsse, executor, may be required by the judgment and decree of this honorable court to pay to your orators the amount of said bond with interest thereon from the seventeenth day of April, one thousand eight hundred and sixty-eight, out of the assetts belonging to the estate of *the estate of* the John Lafarge, deceased; and that your orators may have such further and other relief as to your honors shall seem meet, and as may be agreeable to equity and good conscience:

May it please your honors to grant unto your orators the writ of subpœna of the United States of America to be directed to the said
25 Louis Emile Lahens, Louisa Jones, executrix, as aforesaid, and John Binsse, executor, as aforesaid, thereby commanding them and every of them at a certain day, and under a certain pain therein specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform and abide such order and decree therein as to your honors shall seem meet. And your orators shall ever pray, &c.

THOMAS FIELDEN,
W. C. PICKERSGILL,
Survivors, &c.,
By JOHN R. GARDNER,
Their Attorney in fact.

BOWDOIN, LAROCQUES & BARLOW,
Solr's for Plaintiff.

W. W. MCFARLAND,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On the nineteenth day of August, one thousand eight hundred and sixty-eight, before me came John R. Gardner, to me personally known, and who subscribed the foregoing bill of complaint, who being
26 duly sworn did depose and say, that neither of the above-named complainants are within the State of New York, and that he is the attorney in fact for said complainants; that he has read the said bill and knows the contents thereof, and that the same is true of his own personal knowledge, except as to the matters which are therein stated on information and belief, and as to these he believes them to be true.

[L. S.] JOHN A. HILLERY,
Notary Public, N. Y. City.

(Endorsed:) U. S. circuit court, southern district of N. Y. In equity. Thomas Fielden, & an'r, survivors, &c., against Louis Amile Larens, individually, and Louisa Jones & John Binsse, as exex. exeor., &c. Bill of complaint. Bowdoin Larocque & Barlow, solicitors for plaintiffs, 35 William street, N. Y.

27 { STATE SEAL. } The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come, greeting:

Know ye, that we, having inspected the files of the superior court of the city of New York, do find there remaining on file a certain judgment roll in an action wherein Thomas Fielden and others are plaintiffs, and Louis Emile Lahens is defendant, in the words and figures following, to wit:

28

29 In the court of appeals.

THOMAS FIELDEN, DANIEL CAMPBELL, AND William C. Pickersgill, survivors of Joshua Fielden and others, appellants,
against
PIERRE FRANCOIS LAHENS, EDOUARD ERNEST Lahens and Louis Emile Lahens, survivors of Augustin Edouard Gaudard, respondents. } Case and exceptions.

Larocques & Barlow, attorneys for appellants; T. James Glover, attorney for respondents, P. F. & E. E. Lahens; W. W. Van Wagenen, attorney for respondent, L. E. Lahens.

30

31 In the court of appeals.

THOMAS FIELDEN, DANIEL CAMPBELL, AND William C. Pickersgill, survivors of Joshua Fielden and others, appellants,
against
PIERRE FRANCOIS LAHENS, EDOUARD ERNEST Lahens, and Louis Emile Lahens, survivors of Augustin Edouard Gaudard, respondents. } Case and exceptions.

Larocques & Barlow, attorneys for appellants; T. James Glover, attorney for respondents, P. F. & E. E. Lahens; W. W. Van Wagenen, attorney for respondent, L. E. Lahens.

32

33 Superior court of the city of New York.

THOMAS FIELDEN AND OTHERS, APPELLANTS,
against
LOUIS EMILE LAHENS AND OTHERS, RESPONDENTS.

CLERK'S OFFICE,
Superior court of the city of New York:

I, Robert D. Livingston, clerk of the superior court of the city of New York, having compared the annexed copies judgment roll on affirmance, and notice of appeal to the court of appeals in the above-entitled action with the originals on file in this office, do certify that the same are correct transcripts therefrom, and of the whole of said originals.

In witness whereof I have hereunto subscribed my name and affixed the seal of the superior court of the city of New York this 12th day of August, A. D. 1862.

[L. S.] ROBERT D. LIVINGSTON, *Clerk.*

34 New York superior court.

THOMAS FIELDEN, DANIEL CAMPBELL, AND William C. Pickersgill, survivors, &c.,
against
PIERRE F. LAHENS, EDOUARD E. LAHENS, AND Louis E. Lahens, survivors, &c.

To Robert D. Livingston, esquire, clerk, &c.; Francis Dominick, esquire, att'y for def't, L. E. Lahens; T. James Glover, esquire, att'y for def'ts, P. F. & E. E. Lahens:

GENTLEMEN: You will please take notice that the plaintiffs above-named hereby appeal to the general term of the superior court of the city of New York, from the judgment entered in the above-entitled action, upon the report of the referees in said action, on the twenty-second day of October, in the year one thousand eight hundred and sixty-one, awarding judgment of non-suit in favor of the above-named defendants, against the above-named plaintiffs, and further awarding to the said defendants their costs and allowances in said action, as follows, that is to say: To the defendants, Pierre F. and Edouard E. Lahens, the sum of one thousand one hundred dollars, for their costs and allowance, and to the defendant, Louis E. Lahens, the sum of fifty-one hundred
35 and twenty-nine dollars and eighty-seven cents, for his costs and allowance, and from the whole of the said judgment.

Dated New York, October 29th, 1861.

Yours, &c.,

LAROCQUES & BARLOW,
Att'ys for plaintiffs and appellants, 91 Merchants' Exchange, New York City.

Superior court of the city of New York.

THOMAS FIELDEN, DANIEL CAMPBELL, AND WILLIAM C. Pickersgill, survivors of Joshua Fielden, James Fielden, and John Fielden,
against
PIERRE FRANCOIS LAHENS, EDOUARD ERNEST LAHENS, and Louis Emile Lahens, survivors of Augustin Edouard Gaudard.

CLERK'S OFFICE,
Superior court of the city of New York:

I, Robert D. Livingston, clerk of the superior court of the city of

New York, having compared the annexed copy judgment-roll in the above-entitled action with the original on file in this office, do certify that the same is a correct transcript therefrom, and of the whole of said original.

36 In witness whereof I have hereunto subscribed my name and affixed the seal of the superior court of the city of New York this 10th day of December, A. D. 1861.

[L. S.] ROBERT D. LIVINGSTON, *Clerk.*

In the superior court of the city of New York.

Of October term, to wit, of the 21st day of October, as yet of October term, in the year one thousand eight hundred and forty-four.

CITY AND COUNTY OF NEW YORK, *ss:*

Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill, plaintiffs in this suit, by Francis Griffin, their attorney, complain of Pierre Francois Lahens, Augustin Edouard Gaudard, Louis Emile Lahens, and Edouard Ernest Lahens, defendants in this suit, being in custody, &c., of a plea of trespass on the case upon promises. For that whereas the said defendants, at the several times hereinafter mentioned, and before and afterwards, were partners in trade and business, under the name, style, and firm of J. Lahens & Co., to wit, at the place aforesaid. And for that, whereas also, one Alexander Caselli, heretofore, to wit, on the twenty-fifth day of May, in the year one thousand eight hundred and forty-four, at New York, to wit, at the city and in the county of New York aforesaid, made a certain note in writing, commonly called a promissory note, bearing date the day and year last aforesaid, and then and there delivered the said note to the said defendants, by which said note the said Alexander Caselli promised to pay to the said defendants or order, by the name and addition of Messrs. J. Lahens & Co., sixty days

37 after the date of the said promissory note, fourteen thousand dollars, value received. And the said defendants, to whom, or to whose order the payment of the said sum of money in the said note specified was to be made as aforesaid, afterwards, and before the payment of the said sum of money mentioned in the said note, or any part thereof, and also before the time limited and appointed by the said note for the payment thereof, to wit, on the same day and year, and at the place aforesaid, endorsed the said note in writing, and by that endorsement ordered and appointed the contents of the said note to be paid to the said plaintiffs, or order, and then and there delivered the said note, so endorsed, to the said plaintiffs. And the said plaintiffs in fact say, that afterwards, when the said note became due and payable, according to the tenor and effect thereof, to wit, on the twenty-seventh day of July, one thousand eight hundred and forty-four, at the place aforesaid, the said note, with the said endorsement so thereon made as aforesaid, was presented and shown to the said Alexander Caselli for payment thereof, who then and there had notice of the said endorsement, and who then and there was requested to pay the said sum of money in the said note specified, according to the tenor and effect of the said note, and of the said endorsement so thereon made as aforesaid; but the said Alexander Caselli then and there refused and neglected to pay the said sum of money in the said note specified, or any part thereof, to the said plaintiffs, of which the said defendants afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, had notice.

By reason whereof, and by force of the statute in such case made and provided, the said defendants became liable to pay to the said plaintiffs the said sum of money in the said note specified; and being so liable, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay to the said plaintiffs the said sum of money in the said note specified, when the said defendants should be thereunto afterwards requested.

38 And for that whereas, also, the said Alexander Caselli heretofore, to wit, on the said twenty-fifth day of May, in the year one thousand eight hundred and forty-four, at New York aforesaid, to wit, at the city and in the county of New York aforesaid, made a certain other note in writing, commonly called a promissory note, bearing date the day and year last aforesaid, and then and there delivered the said note to the said defendants, by which said note the said Alexander Caselli promised to pay to the said defendants, or order, by the said name and addition of Messrs. J. Lahens & Co., ninety days after the date of the said last-mentioned promissory note, thirteen thousand five hundred dollars, value received. And the said defendants, to whom, or to whose order, the payment of the said sum of money in the said note specified was to be made as aforesaid, afterwards, and before the payment of the said sum of money mentioned in the said note, or any part thereof, and also before the time limited and appointed by the said note for the payment thereof, to wit, on the same day and year, and at the place aforesaid, endorsed the said note in writing, and by that endorsement ordered and appointed the contents of the said note to be paid to the said plaintiffs, or order, and then and there delivered the said note, so endorsed, to the said plaintiffs. And the said plaintiffs in fact say, that afterwards, when the said note became due and payable, according to the tenor and effect thereof, to wit, on the twenty-sixth day of August, one thousand eight hundred and forty-four, at the place aforesaid, the said note, with the said endorsement so thereon made as aforesaid, was presented and shown to the said Alexander Caselli for payment thereof, who then and there had notice of the said endorsement, and who then and there was requested to pay the said sum of money in the said note specified, according to the tenor and effect of the said note, and of the said endorsement so thereon made as aforesaid. But the said Alexander Caselli then and there refused and neglected to pay the said sum of money in the said note specified, or any part thereof, to the said plaintiffs, of which the said defendants, afterwards, to wit, on the

39 same day and year last aforesaid, and at the place aforesaid, had notice. By reason whereof, and by force of the statute in such case made and provided, the said defendants became liable to pay to the said plaintiffs the said sum of money in the said note specified; and being so liable the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay to the said plaintiffs the said sum of money in the said note specified, when the said defendants should be thereunto afterwards requested.

And for that whereas, also, the said Alexander Caselli heretofore, to-wit, on the said twenty-fifth day of May, in the year one thousand eight hundred and forty-four, at New York aforesaid, to wit, at the City and in the County of New York aforesaid, made a certain other note in writing, commonly called a promissory note, bearing date the day and year last aforesaid, and then and there delivered the said note to the said defendants, by which said note the said Alexander Caselli promised

to pay to the said defendants, or order, by the said name and addition of Messrs. J. Lahens & Co., ninety days after date of the said last-mentioned promissory note, twenty-one thousand two hundred and twenty-one dollars and forty-three cents, value received.

And the said defendants, to whom or to whose order the payment of the said sum of money in the said note specified was to be made as aforesaid, afterwards, and before the payment of the said sum of money mentioned in the said note, or any part thereof, and also before the time limited and appointed by the said note for the payment thereof, to wit, on the same day and year, and at the place aforesaid, endorsed the said note in writing, and by that endorsement ordered and appointed the contents of the said note to be paid to the said plaintiffs, or order, and then and there delivered the said note, so endorsed, to the said plaintiffs; and the said plaintiffs in fact say, that afterwards, when the said note became due and payable, according to the tenor and effect
40 thereof, to wit, on the twenty-sixth of August, one thousand eight hundred and forty-four, at the place aforesaid, the said note, with the said endorsement so thereon made as aforesaid, was presented and shown to the said Alexander Caselli for payment thereof, who then and there had notice of said endorsement, and who then and there was requested to pay the said sum of money in the said note specified, according to the tenor and effect of the said note, and of the said endorsement so thereon made as aforesaid; but the said Alexander Caselli then and there refused and neglected to pay the said sum of money in the said note specified, or any part thereof, to the said plaintiffs, of which the said defendants, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, had notice. By reason whereof, and by force of the statute in such case made and provided, the said defendants became liable to pay to the said plaintiffs the said sum of money in the said note specified. Being so liable, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay to the said plaintiffs the said sum of money in the said note specified, when the said defendants should be thereunto afterwards requested. And whereas, also, the said defendants, afterwards, to wit, on the fifth day of October, in the year one thousand eight hundred and forty-four, at the place aforesaid, were indebted to the said plaintiffs in the sum of one hundred thousand dollars, lawful money of the United States of America, for so much money before that time lent and advanced by the said plaintiffs to the said defendants, and at the special instance and request of the said defendants, and for other money by the said plaintiffs, before that time paid, laid out and expended for the said defendants, and at the like request of the said defendants, and for other money by the said defendants, before that time had and received, to and for the use of the said plaintiffs; and being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there
41 faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when the said defendants should be thereunto afterwards requested. And whereas, also, the said defendants, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiffs, of and concerning divers other sums of money, before that time due and owing from the said defendants to the said plaintiffs, and then and there being in arrear and unpaid; and

upon such accounting, the said defendants then and there were found to be in arrear, and indebted to the said plaintiffs in the further sum of one hundred thousand dollars, of like lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiffs, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendants should be thereunto afterwards requested. Nevertheless, the said defendants (although often requested, &c.) have not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs; but to pay the same, or any part thereof, to the said plaintiffs, the said defendants have hitherto wholly refused, and still do refuse, to the damage of the said plaintiffs of one hundred thousand dollars, and thereof the said plaintiffs bring suit, &c.

FRANCIS GRIFFIN,
Attorney for Plaintiffs.

42 New York superior court.

PIERRE FRANCOIS LAHENS, AUGUSTIN EDOUARD GAUDARD, LOUIS EMILE LAHENS and EDOUARD ERNEST LAHENS,
adsm.
JOSHUA FIELDEN, JOHN FIELDEN, JAMES FIELDEN, THOMAS FIELDEN, DANIEL CAMPBELL and WILLIAM C. PICKERSGILL.
} Affidavit of merit.

CITY AND COUNTY OF NEW YORK, *ss:*

Louis Emile Lahens, one of the defendants in the above entitled cause, being duly sworn, doth depose and say, that he has fully and fairly stated the case in the above cause to William W. Van Wagenen, of the city of New York, the counsel of the said defendants, and that the said defendants have a good and substantial defence on the merits to the whole of the plaintiffs' demand on the promissory notes respectively, on which this action is brought, as he is advised by the said counsel of the said defendants, and verily believes to be true.

E. LAHENS.

Sworn before me this 19th day of November, 1844.
JOSEPH STRONG,
Com. of Deeds.

43 New York superior court.

PIERRE FRANCOIS LAHENS ET AL.
ads.
JOSHUA FIELDEN ET AL.

And the said Pierre Francois Lahens, Augustin Edouard Gaudard, Louis Emile Lahens and Edward Ernest Lahens, defendants in this suit, by William W. Van Wagenen, their attorney, come and defend the wrong and injury, when, &c., and say that they did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendants, and of this they put themselves upon the country, and the said plaintiffs likewise, &c.

WM. W. VAN WAGENEN,
Attorney for Defendants.

SIR: Please to take notice, that the said defendants, at the trial of the above cause, will insist upon and give in evidence, under the general issue above pleaded, that the said promissory notes, in the said declaration mentioned, were all respectively endorsed by the said Louis Emile Lahens, with the name or addition of the said firm of J. Lahens & Co., and were by him delivered, so endorsed, to one Alexander Caselli, without any consideration whatever, and upon the sole and expressed condition that the said Alexander Caselli should be authorized to deliver the same to the said William C. Pickersgill, one of, and on behalf of, the said plaintiffs, only as a guaranty that a certain supposed or estimated account, in or about the month of April, A. D. 1844,
44 made out by the said Alexander Caselli, showing, or claiming to show, the amount of funds in the hands of the plaintiffs to his credit, arising from the sales of cotton made for his account by the said plaintiffs, over proportionate advances and expenses upon the cotton so sold, and predicated upon which account certain advances had been made by the said William C. Pickersgill, one of, and on behalf of, the said plaintiffs, to the said Alexander Caselli, should prove to be correct. And further, that the promissory notes aforesaid were each and all delivered by the said Alexander Caselli, to the said William C. Pickersgill on behalf of the said plaintiffs, for and upon the said specified and limited purpose and condition. And further, that the said estimated account, for the correctness whereof the said promissory notes were so delivered as a guaranty as aforesaid, was true, just and correct, and that no consideration ever existed as between the said plaintiffs and the said defendants for the said supposed endorsement.

And you will please further to take notice, that the said defendants, at the trial of the above cause, will insist upon and give in evidence, under the general issue above pleaded, that the said promissory notes, in the said declaration mentioned, were all respectively endorsed by the said Louis Emile Lahens, with the name or addition of the said firm of J. Lahens & Co., and were by him delivered, so endorsed, to one Alexander Caselli, without any consideration whatever, and upon the sole and expressed condition that the said Alexander Caselli should be authorized to deliver the same to the said plaintiffs only as a guaranty that a certain supposed or estimated account, in or about the month of April, A. D. 1844, made out by the said Alexander Caselli, showing, or claiming to show, the amount of the funds in the hands of the said plaintiffs to his credit, arising from the sales of cotton made for the account of the said Caselli by the said plaintiffs, over proportionate advances and expenses upon the cotton so sold, and predicated upon which supposed account, certain advances of moneys had been made by the said William C. Pickersgill, one of, and on behalf of the said
45 plaintiffs, to the said Alexander Caselli, should prove to be correct. And further, that no just and true account has been furnished by the said plaintiffs, whereby the accuracy of the said supposed or estimated account could be properly tested. And you will be required at the trial of the said cause to produce, and establish by legal proof, an account or statement, showing what cotton, shipped by the said Alexander Caselli to the said plaintiffs, and for the proceeds whereof they had not accounted, had been sold before or during the month of April, A. D. 1844; what proportion the cotton so sold formed of the original invoices respectively, under which the same had been shipped; what advances had been made by the said plaintiffs upon such invoices respectively, and what would be the proportion of such advances pro rata upon the portions of such invoices which had been

sold; and what, in like manner, would be the amount of the commissions, charges and legal expenses, with a full and detailed specification of the same pro rata upon such portions of the said invoices as had been sold at or during the period aforesaid.

And you will be further required, at the said trial, to prove what consideration (if any) passed between the said plaintiffs and the said Alexander Caselli, at the time of the transfer and delivery of the said promissory notes, and each of them.

Dated, the 19th day of November, A. D. 1844.

Yours, &c.,

WM. VAN WAGENEN,
Att'y for Defendants.

To FRANCIS GRIFFIN, Esq.,
Att'y for Plaintiffs.

Filed November 20, 1844.

46 At a special term of the superior court of the city of New York, held at the city hall in said city, on the second day of May, A. D. 1857:

Present, Mr. Justice Bosworth.

THOMAS FIELDEN, DANIEL CAMPBELL, AND William C. Pickersgill, survivors, &c.,
against
PIERRE FRANCOIS LAHENS, AUGUSTIN EDOUARD GAUDARD, LOUIS EMILE LAHENS, AND EDOUARD ERNEST LAHENS.

An order having been made on the twenty-ninth day of April, in the year one thousand eight hundred and fifty-seven, requiring the defendants to show cause, at this time and place, why an order should not be made continuing this action against Pierre Francois Lahens, Louis Emile Lahens, and Edward Ernest Lahens, as survivors of Augustin Edouard Gaudard, who has lately died, and the motion to continue this action as aforesaid coming on to be heard, Mr. Van Wagenen, of counsel for the defendant, Louis Emile Lahens, and heretofore of counsel for the other defendants named, read an order made in the above-entitled action, at a special term of this court, on the nineteenth day of October, one thousand eight hundred and fifty-five, and also another order made therein at special term, on the seventh day of February, one thousand eight hundred and fifty-six, and also an order of the general term, made nineteenth of April, one thousand eight hundred and fifty-six, affirm-
47 ing the above last-mentioned orders on appeal, and also an order of the court of appeals, dismissing an appeal from the last-mentioned order, and also a portion of the affidavit of Jeremiah Larocque, esq., one of the attorneys for plaintiffs, whereon the first above-mentioned orders were founded; and the counsel for the plaintiffs read a notice, served upon the defendants' attorneys, of the plaintiffs' election not to make the amendments which liberty had been given them to make by said order.

On reading and filing the said order to show cause, and the affidavit on which said order was founded, and on reading and filing the said portion of said affidavit and the said order already on file, on the part of the said defendant Lahens, and the said notice of election, and on hearing Mr. Larocque in support of the motion to continue, and Mr. Van Wagenen in opposition, and due deliberation having been had, it is ordered that this action be, and the same is hereby, continued against

Pierre Francois Lahens, Louis Emile Lahens; and Edouard Ernest Lahens, as survivors of said Augustin Edouard Gaudard.
(Enter.) M. H.

48 New York superior court.

THOMAS FIELDEN, DANIEL CAMPBELL, AND William C. Pickersgill, survivors, &c.,
against
PIERRE F. LAHENS AND OTHERS.

It is hereby stipulated and agreed, that the above-entitled cause, and all the issues therein, be referred to Robert Emmet, Henry B. Cowles, and Henry S. Dodge, esquires, of the city of New York, counsellors-at-law, to hear and determine the same, and that a rule to that effect be entered.
Dated New York, April 27th, 1854.

W. W. VAN WAGENEN,
Att'y for Defendants.
LAROCQUES & BARLOW,
Att'ys for Plaintiffs.

49 At a special term of the superior court of the city of New York, held at the city hall in the city and county of New York, on the 15th day of May, A. D. 1854:
Present, the Hon. W. W. Campbell, justice.

THOMAS FIELDEN, DANIEL CAMPBELL, AND William C. Pickersgill, survivors, &c.,
against
PIERRE F. LAHENS AND OTHERS.

On reading and filing stipulation signed by the attorneys for both parties, and on motion of the attorneys for the plaintiffs, it is ordered that the above-entitled action, and all the issues therein, be, and the same are hereby, referred to Robert Emmet, Henry B. Cowles, and Henry S. Dodge, esquires, of the city of New York, counsellors-at-law, to hear and determine the same.
(Enter order.)

WILLIAM W. CAMPBELL.

Filed May 15, 1854.

50 At a special term of the superior court of the city of New York, held at the city hall in the city of New York, on the 6th day of October, in the year 1854:
Present, Hon. Joseph S. Bosworth, justice.

THOMAS FIELDEN AND OTHERS, SURVIVORS, &C.,
against
PIERRE F. LAHENS AND OTHERS.

On reading and filing motion papers and affidavit, in opposition, and on hearing Mr. Larocque, for the plaintiffs, and Mr. Kent, for the defendants, ordered, that George C. Goddard, of the city of New York, counsellor-at-law, be and he is hereby substituted, as referee in this cause, in the place and stead of Henry B. Cowles, esquire, who declines to serve, and to act as such referee in conjunction with Robert Emmet and Henry S. Dodge, esquires.
(Enter this.) J. S. B.
Filed October 7, 1854.

51 At a special term of the superior court of the city of New York, held at the city hall in the city of New York, on the 26th day of January, A. D. 1857:

Present, Mr. Justice Duer.

THOMAS FIELDEN AND OTHERS
against
PIERRE F. LAHENS AND OTHERS.

A motion in the above action for the appointment of a referee, in the place of Henry S. Dodge, esquire, deceased, having come on to be heard, Mr. Van Wagenen, of counsel for the defendant Louis Emile Lahens, and heretofore of counsel for the other defendants named, raised the preliminary objection to the title of the cause, that the same should have been entitled solely against the said Louis Emile Lahens, as defendant, inasmuch as the action had been discontinued against the other defendants by the orders hereinafter referred to, and, in support thereof, read an order made in the above-entitled action, at a special term of this court, on the 19th day of October, 1855, and also another order, made therein at special term, on the 7th day of February, 1856, and also an order of the general term, made 19th April, 1856, affirming the above last-mentioned orders on appeal, and also an order of the court of appeals dismissing an appeal from the last-mentioned order, and also a portion of the affidavit of Jeremiah Larocque, esquire, one of the attorneys for plaintiffs, whereon the first above-mentioned orders were founded; and the counsel for the plaintiffs read a notice, served upon the
52 defendants' attorneys, of the plaintiffs' election not to make the amendments which liberty had been given them to make by said orders; and after hearing Mr. Van Wagenen in support of the said objection, and Mr. Larocque, of counsel for plaintiffs, in opposition, it is ordered, and the court hereby doth order that the said objection be, and the same is hereby, overruled.

And on reading the affidavit presented on this motion, and on hearing Mr. Larocque in support of the motion, it is ordered that William Betts, esquire, counsellor-at-law, be hereby appointed and substituted as a referee in the above-entitled action, in the place and stead of the said Henry S. Dodge, esquire, deceased.

(Enter.) J. DUER.

Filed February 19, 1857.

At a special term of the superior court of the city of New York, held on the 29th day of May, 1858:

Present, Hon. M. Hoffman, justice.

THOMAS FIELDEN AND OTHERS, SURVIVORS, &C.,
ag'st
LOUIS EMILE LAHENS AND OTHERS.

On reading and filing affidavits of L. Bouquet and T. J. Glover, on behalf of Pierre Francois Lahens and Edouard Ernest Lahens, two of the defendants herein, and on reading and filing affidavits of Louis Emile Lahens, Wm. W. Van Wagenen, and F. Dominick, on the part of said Louis Emile Lahens, and of J. Larocque and William C. Pickersgill, on the part of the plaintiffs, and also on reading and filing an affidavit of Theodore Bouquet, showing his authority in the premises, and sworn to on the 19th day of May, 1858, with verified extracts from letters therein set forth.

53 And after hearing counsel in support of the motion made on behalf of said Pierre Francois Lahens and Edouard Ernest Lahens, and counsel for the plaintiffs having been heard in opposition thereto, and Mr. Van Wagenen having also been heard in opposition thereto, ordered, that T. J. Glover be and he is hereby substituted as attorney of record herein for Pierre Francois Lahens and Edouard Ernest Lahens, two of the defendants herein, in the place and stead of Mr. Van Wagenen, who heretofore appeared on behalf of such defendants. And it is further ordered that the said Pierre Francois Lahens and Edouard Ernest Lahens be at liberty to file and serve, within five days, a separate plea of the general issue as of the 19th day of November, 1844.

And it is further ordered that this order be made without prejudice to any lien or claim of Wm. W. Van Wagenen and of said Francis Dominick, esquires, or either of them.

Filed June 2, 1858.

Superior court of the city of New York.

THOMAS FIELDEN AND OTHERS, SURVIVORS, &C., *against* PIERRE FRANCOIS LAHENS AND EDOUARD Ernest Lahens, impleaded, &c., &c.

And the said Pierre Francois Lahens and Edouard Ernest Lahens, two of the defendants in this suit, by T. J. Glover, their attorney, come and defend the wrong and injury, when, &c., and say that they did not undertake and promise in manner and form as the said plaintiffs

54 in this suit have above thereof declared against the said defendants, and of this they put themselves upon the country, and the said plaintiffs likewise, &c.

T. J. GLOVER,
Att'y for P. F. & E. E. Lahens.

Please take notice that the above is a copy of the plea of the above-named defendants, Pierre Francois Lahens and Edouard Ernest Lahens, filed in the office of the clerk of this court, as of the 19th day of November, 1844, pursuant to an order made at special term in this suit, and dated the 29th day of May, 1858.

Dated June 1st, 1858.

Yours, &c.,

T. J. GLOVER, *Att'y, &c.*

To LAROCQUES & BARLOW, esq'rs,
Attorneys for Pl'ffs.

F. DOMINICK, esqr.,
Att'y for L. E. Lahens.

Filed June 3, 1858.

New York superior court.

THOMAS FIELDEN, DANIEL CAMPBELL, AND William C. Pickersgill, survivors, &c., *against* PIERRE FRANCOIS LAHENS, LOUIS EMILE Lahens, and Edouard Ernest Lahens, survivors, &c.

This action and the issues therein having, by orders of this court

heretofore made, been referred to Robert Emmet, George C. Goddard, and William Betts, esquires, to hear and determine the same, and the said referees having been attended by the respective counsel for the parties above named, and having all heard, examined and considered the proofs before them, and the arguments of the said counsel, we, the undersigned referees as aforesaid, do hereby report the following, as the facts found by us, that is to say:

First. That at the time of the making and endorsing of the promissory notes in the declaration in this action set forth, Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill were copartners in trade, under the respective firms of Fielden Brothers & Co., of the city of Liverpool, in England, and of W. C. Pickersgill & Co., at the city of New York. That the said Joshua Fielden, John Fielden, and James Fielden have since departed this life, and that the said Thomas Fielden, Daniel Campbell, and William C. Pickersgill have survived them. Also, that at the time of the making and endorsing of the said promissory notes, Pierre Francois Lahens, Edouard Ernest Lahens, Edouard Gaudard, and Louis Emile Lohens were copartners in mercantile business at Havre, in France, and at the city of New York, respectively, under the firm of J. Lahens & Co. That the said Louis Emile Lahens was the only one of the said copartners then residing in the city of New York, or in the United States. That the said Edouard Gaudard has since departed this life, and that the defendants in this action have survived him.

Second. That the endorsements of the name of J. Lahens & Co. upon the said promissory notes were made and executed in the city of New York by the defendant, Louis Emile Lahens, one of the members of the said firm, and delivered by him to Alexander Caselli, the maker of the said notes, in the said city, for the accommodation of the said
56 Alexander Caselli, and that no consideration was received by the said J. Lahens & Co. for such endorsement.

Third. That the said notes, so endorsed, were delivered by the said Alexander Caselli, the maker thereof, to the said firm of W. C. Pickersgill & Co., at the said city of New York.

Fourth. That the said W. C. Pickersgill & Co., by the fact of such possession and delivery of the said notes to them by the maker thereof, after the same had been so endorsed by the name of the said J. Lahens & Co., had notice that the said J. Lahens & Co. had received no value therefor, and that the said endorsements were made for the benefit and accommodation of the maker of the said notes.

Fifth. That the plaintiffs have failed to prove a joint liability of the defendants. And we do further report that upon the said facts we find, as a conclusion of law, that the plaintiffs, having so failed to prove a joint liability of all the defendants, cannot recover in this action against the said defendants, or against any or either of them.

And we do, therefore, decide and determine, that all the defendants are entitled to judgment of nonsuit against the plaintiffs, and for their costs.

New York, December 12, 1860.

R. EMMET.
WILLIAM BETTS.

Filed May 30, 1861.

57 New York superior court.

THOMAS FIELDEN AND OTHERS, SURVIVORS, &C., }
against
PIERRE F. LAHENS AND OTHERS, SURVIVORS, &C. }

The plaintiffs except to the report of Robert Emmet and William Betts, esquires, two of the referees in this cause, as follows:

First. To the finding that the said notes so endorsed were delivered by the said Alexander Caselli, the maker thereof, to the said firm of W. C. Pickersgill & Co.

Second. To the finding that the said W. C. Pickersgill & Co., by the fact of such possession and delivery of the said notes to them by the maker thereof, after the same had been so endorsed with the name of the said J. Lahens & Co., had notice that the said J. Lahens & Co. had received no value therefor, and that the said endorsements were made for the benefit and accommodation of the maker of the said notes.

Third. To the finding that the plaintiffs have failed to prove a joint liability of the defendants.

Fourth. To the finding, as a conclusion of law, that the plaintiffs, having so failed to prove a joint liability of all the defendants, cannot recover against the said defendants, or against any or either of them.

58 Fifth. To the decision and determination that all the defendants are entitled to judgment of nonsuit against the plaintiffs, and for their costs.

Sixth. To the omission to decide, as a conclusion of law from the facts found, that the plaintiffs are entitled to judgment against the defendant, Louis E. Lahens.

Seventh. To the omission to find or decide whether the notes so endorsed were delivered by the said Caselli to the said W. C. Pickersgill & Co., upon any, and, if upon any, on what consideration they were so delivered.

Eighth. To the omission to find or decide, as requested by the plaintiffs' counsel, that they were so delivered upon good and sufficient consideration, moving from the said W. C. Pickersgill & Co. to the said Caselli.

LAROCQUES & BARLOW,
Att'ys for Plaintiffs.

At a special term of the superior court of the city of New York, held at the city hall in the city of New York, on the 15th day of May, A. D. 1861:

Present, Hon. Anthony L. Robertson, Justice.

THOMAS FIELDEN AND OTHERS }
against
PIERRE F. LAHENS AND OTHERS. }

On reading and filing notice of motion, dated February 16, 1861, together with an affidavit of William W. Van Wagenen, a note of George C. Goddard, referee, and a certificate of Robert Emmet
59 and William Betts, referees, dated December 17, 1860, and a statement of the case, with certificate of William Betts, George C. Goddard and Robert Emmet, referees, respectively, all annexed to such notice of motion; also on reading and filing an affidavit of Jeremiah Larocque, made 26th December, 1860, with a notice of motion dated December 18, 1860, signed T. J. Glover, for defendants, P. F. &

E. E. Lahens, and a certificate of Robert Emmet and William Betts, Referees, and an order for an allowance in favor of Pierre F. and Edouard E. Lahens, all annexed to said Larocque's affidavit, and an additional affidavit of Jeremiah Larocque, made 21st February, 1861, and upon the minutes of Robert Emmet, referee, on all the proceedings in this action, the material testimony, substance of arguments of Willian W. Van Wagenen, of counsel for defendant, Louis Emile Lahens, and opinions of the referees respectively, as printed, the points of the counsel for the plaintiffs on the argument and re-argument of the motion for a non-suit, on the accounts annexed to the answers of the defendants in a suit in chancery between the same parties to this action, and on the testimony annexed to the London and Liverpool commissions, introduced in evidence on the trial, respectively submitted to the court; and Mr. William W. Van Wagenen, of counsel for the defendant, Louis Emile Lahens, having been heard in support of the motion, and Mr. Jeremiah Larocque, of counsel for the plaintiffs, having been heard in opposition thereto, it is ordered, that the defendant, Louis Emile Lahens, have an allowance of two thousand five hundred dollars, in addition to his costs in this action.

(Enter.) A. L. ROBERTSON.
Filed May 30th, 1861.

60 At a special term of the superior court of the city of New York, held on the third day of January, 1861:
Present, Hon. Jas. W. White, Justice.

THOMAS FIELDEN AND OTHERS
ag'st
PIERRE F. LAHENS AND EDOUARD E. LAHENS, impleaded, &c.

On reading and filing the certificate of the referees herein, dated 17th December, 1860, and the notice of motion herein, and on the pleadings and proceedings in this action, and the other papers mentioned in said notice, and also on reading and filing the affidavit of Mr. J. Larocque, on the part of the plaintiffs, and after hearing Mr. T. J. Glover, attorney for the defendants, Pierre F. Lahens and Edouard Ernest Lahens, and Mr. J. Larocque for the plaintiffs, and mature deliberation being thereon had, ordered, that said defendants, Pierre F. Lahens and Edouard Ernest Lahens, have an additional allowance of one thousand and fifty dollars, and that the other costs in this action be adjusted, &c., &c., as in decision.

(Enter.) J. W. W.
Filed January 9, 1861.

61 Superior court of the city of New York.

THOMAS FIELDEN, DANIEL CAMPBELL, AND WILLIAM C. Pickersgill, survivors of Joshua Fielden, James Fielden, and John Fielden,
against
PIERRE FRANCOIS LAHENS, EDOUARD ERNEST LAHENS, and Louis Emile Lahens, survivors of Augustin Edouard Gaudard.

Judgment this twenty-second day (22d) of October, A. D. 1861.
This action having been duly referred to Robert Emmet, esquire,

George C. Goddard, esquire, and William Betts, esq., all of the city of New York, counsellors-at law, to hear and determine the same, and all the issues therein, and the majority of said referees having made their report, bearing date the twelfth day of December, one thousand eight hundred and sixty, and having thereby found that all the defendants are entitled to judgment of nonsuit against the plaintiffs, and for their costs, now, on reading and filing said report, ordered judgment of nonsuit in this action, in favor of the said defendants against the said plaintiffs. And on motion of T. James Glover, esquire, attorney and of counsel for the defendants, Pierre F. Lahens and Edouard E. Lahens, it is further ordered and adjudged, that the said defendants, Pierre F. Lahens and Edouard E. Lahens, recover of the said Thomas Fielden, Daniel Campbell and William C. Pickersgill, plaintiffs herein, the costs of said last-named defendants, adjusted at the sum of eleven
62 hundred dollars, including the extra allowance awarded said defendants by the court.

And on motion of W. W. Van Wagenen, esquire, of counsel for the defendant, Louis E. Lahens, it is further ordered and adjudged, that said defendant, Louis E. Lahens, recover of the said Thomas Fielden, Daniel Campbell and William C. Pickersgill, plaintiffs herein, the costs of said last-named defendant, adjusted at the sum of fifty-one hundred and twenty-nine dollars and eighty-seven cents, including the extra allowance awarded by the court to the said last-named defendant.

ROBERT D. LIVINGSTON, *Clerk.*

Filed October 22, 1861.

(A copy.)

ROBERT D. LIVINGSTON, *Clerk.*

Superior court.

THOMAS FIELDEN AND OTHERS, SURVIVORS, &C., *against* PIERRE F. LAHENS AND OTHERS.

This cause was tried before Robert Emmet, George C. Goddard & William Betts, esqs., referees.

The trial was commenced 1858, February 4th.

Mr. Lord and Mr. Larocque appeared for the plaintiffs, and Mr. Van Wagenen and Mr. Dominick for the defendant, Louis Emile Lahens, only.

The other defendants, at a subsequent stage of the trial, appeared by Messrs. O'Conor and Glover, their counsel, the latter having also been substituted as their attorney, in place of Mr. Dominick.

The plaintiff's counsel offered in evidence—

63 1. Stipulation, dated 13th October, 1845, marked Exhibit No. 1, which was read as follows:

Superior court.

JOSHUA FIELDEN AND OTHERS *vs.* PIERRE FRANCOIS LAHENS, AUGUSTIN EDOUARD GAUDard, Louis Emile Lahens and Edouard Ernest Lahens.

It is hereby admitted that the above named defendants, at the time of the making of the promissory notes declared upon the above cause,

and of the endorsement of the same, composed the firm of J. Lahens & Co.; and that the said notes (the originals of which are identified by the initials of the defendants' attorney in the margin thereof) are endorsed "J. Lahens & Co.," in the proper handwriting of Louis Emile Lahens, one of the members of said firm.

Dated New York, Oct. 13, 1845.

WM. W. VAN WAGENEN,
Att'y for Defendants.

2. The three promissory notes described in the declaration, with their endorsements, as follows:

"No.

W. C. P. & Co. NEW YORK, *25th May*, 1844.

W. W. V. W. [2,769.] Sixty days after date, I promise to pay Messrs. J. Lahens & Co., or order, fourteen thousand dollars, value received.

ALEX. CASELLI.

$14,000.

(Endorsed:) J. Lahens & Co. Pay Merchants' Bank. W. C. Pickersgill, & Co.

64 No.

W. C. P. & Co. NEW YORK, 25 *May*, 1844.

W. W. V. W. [2,771.] Ninety days after date, I promise to pay Messrs. J. Lahens & Co., or order, thirteen thousand and five hundred dollars, value received.

ALEX. CASELLI.

$13,500.

(Endorsed:) J. Lahens & Co. Pay Merchants' Bank. W. C. Pickersgill & Co.

No. 3,096. NEW YORK, *25th May*, 1844.

W. W. V. W. Ninety days after date, I promise to pay Messrs. J. Lahens & Co., or order, twenty-one thousand two hundred and twenty-one $\frac{43}{100}$ dollars, value received.

$21,221 43.

AL'R CASELLI.

(Endorsed:) J. Lahens & Co., W. C. Pickersgill & Co.

3. The three notaries' certificates of due presentment and protest, and notice to the endorsers of those three notes, as follows:

UNITED STATES OF AMERICA, *State of New York, ss:*

On the twenty-seventh day of July, in the year of our Lord one thousand eight hundred and forty-four, at the request of the Merchants' Bank, I, Elijah H. Riker, notary public, duly admitted and
65 sworn, dwelling in the city of New York, did present the original promissory note, hereunto annexed, for $14,000, dated New York, 25th May, 1844, to Al'r Caselli in person, the maker, and demanded of him payment thereof, which he refused. I further certify, that on Monday morning, July 29th, 1844, I served notice of protest of said note on one of the firm of J. Lahens & Co., endorsers, at their office in Wall street, in this city. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the maker and endorsers of the said promissory note, as against all others whom it doth or may concern, for exchange, reëxchange, and all costs, damages and interest already in-

curred, and to be hereafter incurred, for want of payment of the said promissory note.

Thus done and protested, in the city of New York aforesaid, in the presence of John Doe and Richard Roe, witnesses.

In testimonium veritatis.

[L. S.] ELIJAH H. RIKER,
Notary Public, No. 20 Wall street.

UNITED STATES OF AMERICA, *State of New York, ss:*

On the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and forty-four, at the request of the Merchants' Bank, I, John D. Campbell, notary public, duly admitted and sworn, dwelling in the city of New York, did present the original promissory note, hereto annexed, for $13,500, dated New York, 25th May, 1844, to a clerk at the counting-room of A. Caselli, the maker, and demanded of him payment thereof, which he refused, Mr. Caselli being absent. And I also certify, that on the next morning (Aug. 27, 1844) I served notice of the protest of said note on one of the firm of J. Lahens & Co., endorsers, at their office in Wall street, in this city. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the maker and endorsers of the said promissory note, as against all others whom it doth or may concern, for exchange, reëxchange, and all costs, damages, and interest already incurred, and to be hereafter incurred, for want of payment of the said promissory note.

66

Thus done and protested, in the city of New York aforesaid, in the presence of John Doe and Richard Roe, witnesses.

In testimonium veritatis.

[L. S.] JOHN D. CAMPBELL,
Notary Public.

UNITED STATES OF AMERICA, *State of New York, ss:*

On the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and forty-four, at the request of the Merchants' Bank, I, John D. Campbell, notary public, duly admitted and sworn, dwelling in the city of New York, did present the original promissory note, hereto annexed, for $21,221 43, dated New York, 25th May, 1844, to a clerk at the counting-room of A. Caselli, the maker, and demanded of him payment thereof, which he refused, Mr. Caselli being absent. And I also certify, that on the next morning (August 27, 1844) I served notice of the protest of said note on one of the firm of J. Lahens & Co., endorsers, at their office in Wall street, in this city. Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the maker and endorsers of the said promissory note, as against all others whom it doth or may concern, for exchange, reëxchange, and all costs, damages, and interest already incurred, and to be hereafter incurred, for want of payment of the said promissory note.

67

Thus done and protested, in the city of New York aforesaid, in the presence of John Doe and Richard Roe, witnesses.

In testimonium veritatis.

[L. S.] JOHN D. CAMPBELL,
Notary Public.

These notes, and protests, and certificates were marked Exhibits Nos. 2, 3, and 4. The plaintiffs then rested.

The counsel for Louis Emile Lahens opened the case, and offered in evidence a letter from William C. Pickersgill, one of the plaintiffs, to Alexander Caselli, dated May 25th, 1844, marked Exhibit No. 5, which was read in evidence, as follows:

MY DEAR SIR: I have just received your note, containing your notes endorsed by Messrs. J. Lahens & Co., say one for $13,500, the other for $14,000, to replace in part the securities we handed you on Thursday. The business paper, say $27,500, I shall look for on Monday.

You must be well aware that with no one except yourself should I have done such an unbusiness-like transaction as to deliver up one set of securities until I had received another in their place; and, under such circumstances, I think you ought to have sent me the balance of the securities ere this.

I remain, yours, very truly,

W. C. PICKERSGILL.

SATURDAY, *25th May*, 1844.
A. CASELLI, Esq.

Also an affidavit of William C. Pickersgill, sworn 6th March, 1846, marked Exhibit No. 6, which was read in evidence, as follows:

68 A.

In chancery—before the vice-chancellor.

PIERRE F. LAHENS AND OTHERS,
vs.
JOSHUA FIELDEN AND OTHERS.

CITY AND COUNTY OF NEW YORK, *ss:*

William C. Pickersgill, one of the defendants in the above cause, being duly sworn, deposes and says, that he is the only one of the defendants in this country, the other defendants all residing in England, and that deponent alone, of all the defendants, has any personal knowledge of the terms on which the notes endorsed by the complainants, mentioned and referred to in the bill of complaint in this cause, were delivered to deponent on behalf of the defendants.

Deponent further says that he positively and unequivocally denies that the said notes and endorsements, or either of them, were delivered to deponent by the said Alexander Caselli, or any other person, as security for the correctness of any approximate or other account whatever, or on any such terms or conditions as are set forth in the said bill of complaint; but, on the contrary, deponent expressly declares and avers, that the said notes and endorsements, and each of them, were delivered to deponent, acting for the defendants in this cause, by the said Alexander Caselli, in exchange for other securities previously lodged by him with the said defendants as security for the whole and entire indebtedness of the said Alexander Caselli to the said defendants, and for which prior securities the said notes and endorsements were substituted
69 by the said Alexander Caselli to the said defendants, to be held by them, and are held by them, on the same terms and conditions as the said prior securities, and on no other terms or conditions whatever, and which prior securities were delivered up by deponent to the said Alexander Caselli at the time of receiving the said notes and endorsements. And deponent further says, that at the time of the receipt

of the said notes and endorsements by deponent from the said Alexander Caselli, the indebtedness of the said Alexander Caselli to the defendants greatly exceeded and still greatly exceeds the amount of the said notes and endorsements.

Deponent further says that the only answers ever prepared for, or signed or sworn to by any of the defendants in this cause, were so signed and sworn to in the month of November, in the year one thousand eight hundred and forty-four, by the other defendants, and by deponent in January, 1845, and deny the statements of the bill as to the terms on which the said notes and endorsements were delivered to and received by the defendants as before stated.

Deponent further says that the accounts of the defendants with the said Alexander Caselli were then in an unclosed and unsettled state, the defendants' house at Liverpool having then on hand large quantities of cotton for sale on account of the said Alexander Caselli, which have since been sold; and that the result of a large part of the transactions between the defendants and the said Caselli, of which a discovery is sought by the bill, is shown only by accounts which have been made up since the said answers were sworn to, and of which no discovery could be made by the said answers.

W. C. PICKERSGILL.

Sworn before me this 7th day of March, 1846.

JOSEPH STRONG,
Comm'r of Deeds.

Also, under objection and exception by plaintiffs' counsel, as hereinafter inserted, the deposition de bene esse of Alexander Caselli, (Exhibit No. 7,) which was read in evidence as follows:

70 New York supreme court.

PIERRE F. LAHENS AND OTHERS,
vs.
THOMAS FIELDEN AND OTHERS, SURVIVORS, &C.

Deposition of Alexander Caselli, a witness on the part of the plaintiffs, examined de bene esse pursuant to the annexed order.

Question. What representations were made by you to Louis Emile Lahens at the time of your receiving from him the endorsement of his firm to the note made by you and delivered to William C. Pickersgill referred to in your deposition taken under a commission issued to Texas?

(Objected to.)

Answer. I represented to him that there was a balance due me by the firms in Liverpool, arising from large sales of cotton made, but the account of sales of which had not been received.

Question. What was the comparative value of the balance of the portions of invoices unsold, considered with regard to their value at the time of shipment, and as by advices at that time?

(Objected to.)

Answer. The difference of value was considerable; I cannot state it in figures; the market had been advancing all the time, as far as I recollect now.

Question. Was any consideration paid or promised to the said Louis Emile Lahens for the endorsement of the name of his firm on the said promissory notes?

(Objected to.)

Answer. No.

71 Question. Was such endorsement made as a personal favor, or as a business transaction?

(Objected to.)

Answer. As a personal favor entirely.

Question. Previously to delivering these notes to William C. Pickersgill, had he, on behalf of his firm, held any securities of yours; and if so, for what purpose?

(Objected to.)

Answer. He had. The securities were given by me for an additional advance made upon the cotton then sold, and of which no regular account of sales had yet been rendered, and to be held until such accounts should be received.

Question. How were the advances made to you originally; explain the nature of your transactions with the defendants in that respect?

(Objected to.)

Answer. Originally, as in all cases of my consignments to the firm in Liverpool, W. C. Pickersgill & Co. made me an advance upon each separate invoice and bill of lading.

Question. When and how were accounts sales rendered?

Answer. After each consignment was closed.

Question. When did you become entitled to draw for the balance, if any existed?

(Objected to.)

Answer. As soon as the accounts sales reached my hands.

Question. By the course of dealing of the defendants, if you had shipped 1,000 bales of cotton, of which 999 had been sold at a profit much exceeding all advances and charges on the whole shipment, would you have been considered technically entitled to draw for the balance until the sale of the last bale, or until you should formally have withdrawn it from their hands?

(Objected to.)

Answer. I should not have been entitled to it technically.

Cross-examination:

72 Question. What has become of any memoranda of sales of portions of unsold invoices of cotton which were forwarded to you by Fielden, Brothers & Co. in the course of the month of April, 1844?

Answer. To the best of my knowledge, these memoranda are included in the correspondence which exists now.

Question. Were there no other memoranda forwarded, to your knowledge, than such as appears upon the face of the letters themselves?

Answer. To the best of my recollection these memoranda sometimes were embodied in the letter itself, and sometimes on a detached piece of paper; that depended on the length of the sales.

Question. Were there any such memoranda on detached pieces of paper forwarded in the course of that month of April, 1844, to your recollection; and if so, what has become of them?

Answer. I can't recollect at this time.

Question. In whose possession are now the letters written by Fielden, Brothers & Co. to you during the month of April, 1844?

Answer. I don't know.

Question. In whose possession did you last know them to be?

Answer. I surrendered all my papers to my assignees, Henry Paillet and Louis Emile Lahens.

Question. Which one of the assignees took the actual possession of them?

Answer. I believe they acted in common in every case.

Question. What did you do with the collateral securities which you received back from William C. Pickersgill, at about the time of the delivery to him of your notes, endorsed by J. Lahens & Co., as testified to by you on your examination under the commission already referred to?

Answer. I made use of them to the best of my interests.

Question. Did you not deliver them, or any of them, to Louis Emile Lahens?

73 Answer. I did not deliver them to Lahens, but Mr. Lahens helped me in turning such of them as were negotiable into cash.

Question. Did any of them, or any portion of their proceeds, remain in his hands at the time of your suspension of payments?

Answer. No, sir.

ALEX. CASELLI.

Deposition subscribed by the witness sworn before me the 20th day of June, 1854.

WM. MITCHELL.

(A copy.)

RICHD. B. CONNOLLY, *Clerk.*

Also the deposition of Alexander Caselli, taken under commission.

The plaintiff's counsel, on this deposition being offered, objected that the witness was incompetent from interest at the time he was examined, and that his deposition, therefore, could not be read. The objection was overruled, and the plaintiff's counsel excepted.

The deposition was then read, (being marked Exhibit No. 8,) and is as follows:

Deposition of witness produced, sworn, and examined the twentieth day of February, in the year of our Lord one thousand eight hundred and forty-five, at the city of Matagorda, republic of Texas, under and by virtue of a commission issued out of the superior court of the city of New York, in the United States of America, in a certain cause depending and at issue between Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill, plaintiffs, and Pierre Francois Lahens, Augustin Edouard Gaudard, Louis Emile Lahens, and Edouard Ernest Lahens, defendants, as follows:

74 ALEXANDER CASELLI, of the city of New York, United States of America, merchant, aged forty years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the defendants, doth depose and say as follows:

First interrogatory. What is your name, age, and occupation, and where do you now reside?

To the first interrogatory he saith: Forty-one years of age; merchant; permanent residence, city of New York.

Second interrogatory. Do you know the parties, plaintiffs and defendants, in the title of these interrogatories named, or either and which of them, and how long have you known them, or either and which of them?

To the second interrogatory, he saith: Of the plaintiffs I know none personally, except William C. Pickersgill; of the defendants I know personally Louis Emile Lahans, Augustin Edouard Gaudard; the first I have known for about four years; the two last for about ten years.

Third interrogatory. Have you delivered to the above plaintiffs, or either and which of them, any promissory note or notes made by you; if so, when, and what were the amounts of such note or notes? Declare.

To the third interrogatory, he saith: I have delivered to William C. Pickersgill, in May, 1844, three notes, made by me, the precise amount of which I cannot state, having no record of them here; but their total represents the sum of about forty-eight thousand dollars.

Fourth interrogatory. Were such notes, or either of them, endorsed; and if so, by whom, and what was such endorsement? Declare.

To the fourth interrogatory, he saith: They were endorsed by J. Lahens & Co., in blank.

Fifth interrogatory. What consideration, if any, was received by the endorser of such promissory notes for such endorsement? If
75 such notes, or either of them, were endorsed, state fully all the circumstances attending such endorsement. Declare.

To the fifth interrogatory, he saith: No consideration was received by the endorsers; there was no particular circumstance attending the endorsement; but if by this it is meant what are the circumstances under which the endorsements were given, I can and do state, the notes so endorsed were required by William C. Picketsgill, in exchange for other securities, which I had previously deposited as collaterals into his hands, and which he had returned me to be exchanged.

Sixth interrogatory. Were you authorized by the endorser to use the notes so endorsed as you might think fit, or did you receive them for a special purpose; if the latter, state to what purpose you were authorized to apply them? Declare.

To the sixth interrogatory, he saith: I was not authorized by the endorser to use the notes as I might see fit, and they were received for the special purpose of replacing into the hands of Wm. C. Pickersgill the collateral securities which he had delivered to me, stand in their place and subject to the same conditions, which were, that such securities should remain in Wm. C. Pickersgill's hands against a certain amount of money which he had paid me on account of a balance in my favor, the result, by estimate, of my consignments to the firm in Liverpool, the accounts of which had not reached us; in case such balance was actually due me, the securities, or their amount, were to be returned to me, and in case it was not due me, or it was smaller than the amount paid me, then such securities, or a portion of them, were to be retained by Wm. C. Pickersgill & Co., or the amount or a proportion refunded by me.

Seventh interrogatory. What consideration, if any, was received by you from the plaintiffs, or either of them, upon the delivery of the said promissory notes, or either of them? State fully all the circumstances under which the same were delivered by you.

76 To the seventh interrogatory, he saith: I have already stated the consideration received from the plaintiffs to have been the surrender, then accomplished, of the securities held by them; and I have also stated, I believe, all the circumstances under which the promissory notes were delivered.

Eighth interrogatory. Were such notes delivered by you absolutely or conditionally; and if conditionally, state upon what condition?

To the eighth interrogatory, he saith: The notes were delivered upon the conditions stated in the sixth interrogatory.

Last interrogatory. Do you know any other matter or thing touching the matters in question that may tend to the benefit or advantage of

the said defendants? If yea, declare the same fully and at large, as if you had been particularly interrogated thereto.

To the last interrogatory: Nothing occurs to me at present.

ALEX. CASELLI.

SAMUEL WARD.
THOMAS B. POWER.
E. GONIN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this twentieth day of February, one thousand eight hundred and forty-five, before us.

SAMUEL WARD,
E. GONIN,
THOMAS B. POWER,
Commissioners.

Cross-interrogatories to the foregoing interrogatories.

First cross-interrogatory. Did you not, at sundry times, between the first day of September, A. D. 1843, and the first day of April, A. D. 1844, ship large quantities of cotton and tobacco for sale on your own account, from the city of New York, through the house of W. C.
77 Pickersgill & Co., to the house of Fielden, Brothers & Co., of Liverpool? If yea, please state the quantity thereof in particular, by what ship or ships the same went forward, the quantity of each shipment, and the invoice value thereof; or, if you cannot furnish these particulars, then please state about the quantities and values of the said cotton and tobacco respectively.

To the first cross-interrogatory, he saith: I did, at sundry times, and in the interval named, ship large quantities of cotton and tobacco for sale on my account, from the city of New York and other ports, through the house of W. C. Pickersgill & Co., to the house of Fielden, Brothers & Co., of Liverpool; as to the quantities, name of ship or ships, and invoice value thereof, I can't answer without the aid of my books and papers, which are not in my possession; the shipments are too numerous and too irregular for me to give even an estimate.

Second cross-interrogatory. Did not the said W. C. Pickersgill & Co., at or about the time of the said shipments, make you advances thereon? If yea, state the amount on each shipment, and the time when the same was advanced; or, if you cannot state such amounts in particular, then state, as near as you can, the amount of such advances.

To the second cross-interrogatory, he saith: William C. Pickersgill & Co. did, at or about the time of the said shipment or shipments, make me advances thereon; as to the particular amounts I am unable to answer; but the advances were always ten, fifteen and sometimes twenty per cent. less than the invoice cost, as Wm. C. Pickersgill & Co. would think proper to make them, according to circumstances, for the protection of their interest.

Third cross-interrogatory. Did not the said W. C. Pickersgill & Co., at some time, and when, in the latter part of the year one thousand eight hundred and forty-three, and beginning of the year one thousand eight hundred and forty-four, in addition to the specific advances
78 which had been made by them at the time of the shipment of the aforesaid cottons, advance to you the further sum of twenty-five thousand pounds sterling, or some other and what sum, as a general advance on the cottons, which you theretofore shipped to the

said Fielden, Brothers & Co.? If yea, at what time or times was such general advance made, and what was the amount thereof?

To the third cross-interrogatory, he saith: In the latter part of 1843, and beginning of 1844, Wm. C. Pickersgill & Co. did take my drafts on Fielden, Brothers & Co. for the amount stated, of twenty-five thousand pounds sterling, and paid me the amount, not as a general advance, but in settlement of balances due me, as per accounts rendered by Fielden, Brothers & Co. Subsequently, in the spring of 1844, Wm. C. Pickersgill & Co. paid me a further sum—the exact amount of which I cannot state—and this could more properly be considered as the general advance inquired into; but it was, however, not exactly so, neither; it was, in fact, an advance upon the balance which it was supposed would be, apparently, due me, if regular accounts had been received from Liverpool at the time.

Fourth cross-interrogatory. Did you not, after the said first day of April, A. D. 1844, make further shipments of cotton through the said W. C. Pickersgill & Co. to the said Fielden, Brothers & Co.? If yea, please state when such shipments were respectively made, the quantities and invoice values thereof, and the amount of advances made on each of the said shipments by the said W. C. Pickersgill & Co.; or, if you cannot state these particulars, then state as nearly as you can, the amount of such shipments and of the said advances thereon.

To the fourth cross-interrogatory, he saith: I made further shipments of cotton through the said Wm. C. Pickersgill & Co., to the said Fielden, Brothers & Co., after the first day of April, 1844; but I cannot give the particulars, even by approximation, owing to the reason
79 already stated—the absence of books, memorandums or papers.

Fifth cross-interrogatory. When you placed in the hands of the said W. C. Pickersgill & Co. your notes, endorsed by the said J. Lahens & Co., which are particularly inquired about in the direct interrogatories, did you not withdraw from their hands certain other securities which you had theretofore lodged with them? If yea, what was the nature of such securities, and what was their amount? If in your power, annex a list of them to your answer to these interrogatories. If you cannot annex such list, then describe them as fully and accurately as you can, and of what they or some of them consisted. Were not the said notes endorsed by the said J. Lahens & Co., placed by you in the hands of the said W. C. Pickersgill & Co. for the same purposes, and to be held on the same terms, as the securities for which they were substituted?

To the fifth cross-interrogatory, he saith: At the time, or, rather, shortly before, I placed my notes, endorsed by J. Lahens & Co., in the hands of Wm. C. Pickersgill & Co., I did withdraw from their hands certain other securities which I had theretofore lodged with them; their nature was commercial paper, at long dates, and two promissory bonds, payable at still longer dates; as to the amount, I cannot state it precisely, nor can I annex a list of them, having not got it; but the amount must have been equal to that of the securities given in exchange. These last were placed by me in the hands of Wm. C. Pickersgill & Co., for the same purposes, and to be held on the same terms as the securities for which they were substituted.

Sixth cross-interrogatory. When were the said securities, which were taken out of the hands of the said W. C. Pickersgill & Co., on the substitution of the said notes, endorsed by the said J. Lahens & Co., first placed in the hands of the said W. C. Pickersgill & Co.? State fully and particularly.

80 To the sixth cross-interrogatory, he saith: I cannot state from memory; it must, however, have been a considerable time before said substitution took place. The securities were, besides, several times partially changed, and I believe their delivery by me was not simultaneous with, or did not immediately follow, the payment to which they applied.

Seventh cross-interrogatory. If, in answer to the direct interrogatories, or any of them, you state that you at any time submitted to the said W. C. Pickersgill & Co., or to the said William C. Pickersgill, any statement or memorandum, showing the proceeds of your said cottons, then sold by the said Fielden, Brothers & Co., and the value of your said cottons then remaining unsold in the hands of the said Fielden, Brothers & Co., or any statement to that or the like effect, then please state when, in particular, the same was submitted by you to the said W. C. Pickersgill & Co., or the said William C. Pickersgill. From what sources was such statement made up? Was it not made up from advices of sale, letters, &c., and as furnished to you by the said Fielden, Brothers & Co.? If yea, when were such advices of sale, letters, or other memoranda, received by you from the said Fielden, Brothers & Co.? Were they not received by you in the latter part of April, A. D. 1844, and did they not come forward to you by the steamer which sailed from Liverpool on the fourth of April, A. D. 1844?

To the seventh cross-interrogatory, he saith: I submitted to William C. Pickersgill & Co., on several occasions, memorandums relating to the situation of our respective accounts, proceeds of cotton, &c., and so did he whenever he thought fit; and this was of such frequent occurrence that I cannot name any particular time for its having taken place. Such memoranda, when they applied to my operations with the said Fielden, Brothers & Co., were based upon their own advices, or condensed from their letters as to the time of receiving such advices and letters; these are also so numerous that to state when they gave occasion to a comparison of notes between William C. Pickersgill
81 and myself is impossible; therefore, almost every steamer or packet might be named as conveying some such intelligence, and no doubt the steamer that left Liverpool on the 4th April, 1844, and arrived in the latter part of that month, was one of them.

Eighth cross interrogatory. If, in answer to the direct interrogatories, or any of them, you state that the said W. C. Pickersgill & Co., in consequence of, or based upon, your said statements to them, agreed to make you, or did make you, any advance or advances, please state the amount thereof, and when such advance or advances was or were received by you.

To the eighth cross-interrogatory, he saith: The exact sum inquired into by this interrogatory I cannot state; it must, however, have been equal to the amount of securities deposited; as to the time at which the payment or payments was or were made to me, I do not recollect, nor would it be possible to fix a particular day, as the amount was made up of the excess of William C. Pickersgill & Co.'s sundry payments in general account over the amount I was entitled to for advances on cotton in course of shipment at the time.

Ninth cross-interrogatory. If, in answer to the direct interrogatories, or any of them, you state that you deposited with the said W. C. Pickersgill & Co. any business paper or other securities as collateral in any way or shape for the said advances spoken of in the last preceding cross-interrogatory, or for the correctness of your statements therein also spoken of, please state when, in particular, you deposited such

securities with the said W. C. Pickersgill & Co., and of what the same consisted; and if you cannot state them all, then state what some of them were.

To the ninth cross-interrogatory, he saith: My answers to the previous interrogatories and cross-interrogatories already give all the information I can, both as to the time of the delivery of the securities and as to their nature.

82 Tenth cross-interrogatory. Did not the said J. Lahens & Co., or one of the members of that firm, after the aforesaid notes, endorsed by them, had been deposited with the said W. C. Pickersgill & Co., and before the maturity of any of them, offer in your presence to the said W. C. Pickersgill & Co. to discount, and take up one of the said notes? If yea, please state what led to the said interview, and what passed on that occasion.

To the tenth cross-interrogatory, he saith: Shortly after the notes had been deposited with William C. Pickersgill & Co., and long before any of them was due, Louis Emile Lahens, one of the firm of J. Lahens & Co., came to me one morning, under great excitement, and reported he had just been informed from an undoubted authority that the notes had been seen in the hands of a broker or brokers, and were thus publicly thrown on the market. He asked me whether I had had no warning of such proceeding, and what I thought of it; and on my expressing as much astonishment as himself, he spoke, as a remedy, of publishing a card in the papers explanatory of the origin of the notes, &c. I entreated him to seek an explanation of Wm. C. Pickersgill first, and offered to accompany him there at once, which was accepted. Having found Wm. C. Pickersgill in his office, he, Lahens, hurriedly stated the object of our visit. Wm. C. Pickersgill acknowledged that he had put, I think he said, one of the notes, or, perhaps all the notes, in the hands of his broker; that perhaps he had been wrong, but that he, Lahens, was a great deal too much annoyed at this, which was done every day by everybody and with every name; but still he admitted he had been wrong; had done so merely out of curiosity, to ascertain what was the state of the money market, but Lahens could rely upon it, the notes would from this moment return to his portfolio, and there remain. He, Lahens, referring to the transaction in which the notes had originated, said, the only wonder was, he allowed himself to take them out of it, or something to that effect; whereupon Wm. C. Pickersgill replied, he

83 believed that, strictly speaking, he would have a right to dispose in his own way of one of the notes, because his original agreement with me was, that I should give him J. Lahens & Co.'s name for a smaller amount, and he had only consented to increase this because it seemed not easy for me to give him anything else. Lahens answered, that was an affair between him and me, but the notes were all for one purpose as regarded himself; and he then added, that even if Wm. C. Pickersgill's argument was good, he ought to have applied to him for the money first, when, rather than to have his name hawked about the streets, he would certainly take it up himself.

Eleventh cross-interrogatory. Have you now in your possession, or did you ever have in your possession, any receipt, note, memorandum or other writing of the said William C. Pickersgill, or of the said W. C. Pickersgill & Co., stating or in any way indicating the purposes for for which he or they held the said securities spoken of in the last preceding interrogatory, or the said notes endorsed by the said J. Lahens & Co.? If yea, and in your possession, annex the same to your answers to these interrogatories. If not in your possession, then please

state where and in whose possession the same is or are, and also state particularly what are the contents thereof.

To the eleventh cross-interrogatory, he saith: I have no writings with me of the nature referred to in this interrogatory, nor do I believe I ever received any that could throw any light upon the securities or notes referred to, nor if I had could they be much relied upon. My transactions, nominally, with Wm. C. Pickersgill & Co., were all with their representative, Wm. C. Pickersgill. When such transactions were active, as they generally were, I saw him almost every day, often several times in the same day, when, in a short conversation we would often undo, alter or modify every agreement treated of in the written notes, which we exchanged also every day, and which are quite different from the regular commercial correspondence; the former was of little account, and mostly destroyed the moment it had conveyed its intelligence, and was always signed individually, and addressed
84 in the same way; the letter was considered as all commercial correspondence is—kept on file, and signed by and addressed to each of our firms respectively.

Last cross-interrogatory. Do you know, or can you state any other or further fact, matter or thing material or at all advantageous to the plaintiffs in this suit, touching the matters involved therein? If you do or can, set forth and declare the same as fully and circumstantially as if you had been thereto specially interrogated.

To the last cross-interrogatory, he saith: I believe my answers to the interrogatories and cross-interrogatories embrace the whole of the information I am able to give in the matter.

SAML. WARD. ALEX. CASELLI.
THOS. B. POWER.
E. GONIN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this twentieth day of February, one thousand eight hundred and forty-five, before us.

SAM'L WARD,
E. GONIN,
THOS. B. POWER.
Commissioners.

(A copy.)

GEO. H. E. LYNCH, *Clerk.*

The counsel for the plaintiffs objected in due season to the tenth question and answer in the de bene esse examination of the witness, Caselli, as,

1st. Assuming that there was a course of dealing about which nothing had been proved.

2d. Asking a hypothetical question, and calling upon a witness to state, not a fact, but what would have been considered the party's right, by some one not even designated in the question. Also,

3d. Generally as an incompetent question.

85 Objection overruled, (Emmet dissenting.) Plaintiffs except, and the question and answer read.

At this stage of the trial, Pierre F. Lahens and Edouard Ernest Lahens appeared, by Mr. Glover, their attorney, with Mr. O'Conor as counsel for them.

Mr. Van Wagenen produced as a witness on his own behalf, who was thereupon sworn—

LOUIS EMILE LAHENS, (a defendant:)

The plaintiffs' counsel calls upon the counsel for the other defendants to elect whether Mr. Lahens is to be considered as a witness for himself alone, or for himself and the other defendants.

Mr. Glover, for the other defendants, declines to make any such election.

Referees decide that the others cannot be required to make such election; that Mr. Lahens is examined as a witness for the defence, whether there be in fact one or several defendants.

The plaintiffs' counsel excepts to that decision.

The witness was sworn, and testified as follows:

In the year 1844 I was a member of the firm of J. Lahens & Co.

Q. Did you endorse the name, "J. Lahens & Co.," to three promissory notes made by Alexander Caselli in May, 1844?

A. I did.

Q. What were the dates and amounts of those notes?

A. 25th May, 1844. These are the notes now shown to me. (Exhibits Nos. 2, 3 and 4.)

Q. What was the representation made to you by Mr. Caselli at the time of your endorsing those three notes, as to the purpose for which they were to be endorsed, and what representations did he make to you at that time as to the purpose to which they would be applied by him?

A. Some time in the latter part of May, 1844, Mr. Caselli came to my office and informed me that he had been shipping a large quantity of cotton, to the address of Messrs. Fielden, Bros. & Co., of Liver-
86 pool, on which Pickersgill & Co. had advanced to him; that the greatest part of the cotton had been sold, showing a large surplus above the amount advanced; that he had received notices of sale, but not the regular accounts which are usually sent, by which he could ascertain the precise amount due to him; that he had established an account which he had shown to Mr. Pickersgill, and on which it was agreed between him and Mr. Pickersgill that Mr. Pickersgill should pay him the amount of it, on condition that he, Mr. Caselli, would deposit with him certain guarantee or securities that the account should prove correct. Mr. Caselli having assured me that the account which he had shown to Mr. Pickersgill was correct, requested me to endorse three notes, drawn by himself, being the notes now here shown to me. After that request, I being convinced of Mr. Caselli's accuracy, and out of friendship to him, I agreed to endorse said notes, with the express understanding that said notes should be delivered to Messrs. Pickersgill & Co. in behalf of Fielden, Bros. & Co., of Liverpool, and remain in Pickersgill & Co.'s hands, for no purpose than that they should be security that the account or statement should be correct.

Q. Did you receive any consideration, inducement, promise or benefit, direct or indirect, for the endorsement of those notes, or either of them?

A. None whatever.

Q. Were you told at the time of your making such endorsement?

(Objected to as leading.)

Q. What were you told and what did you understand, at the time of your making such endorsements, had become of the securities originally deposited by Mr. Caselli with Mr. Pickersgill for a like purpose?

(Objected to. Question waived.)

Q. What were you told by Mr. Caselli, at the time of your making such endorsements, had become of the securities originally deposited by him with Mr. Pickersgill for a like purpose?

(Objected to. Objection overruled. Plaintiffs except.)

87 A. He told me that the notes were to replace some other securities which he had put in the hands of Mr. Pickersgill, on behalf of Fielden, Brothers & Co., as a security that the statement which he had presented Mr. Pickersgill, showing a balance in favor of Caselli, accruing from the sale of cotton, made for his account, (account of Mr. Caselli,) should prove correct. I never knew what became of the securities first placed in the hands of Mr. Pickersgill.

Q. After hearing of these notes being in the hands of the broker, did you have an interview with Mr. Pickersgill upon the subject?

A. I did.

Q. Who was present, if any one, at that interview?

A. Mr. A. Caselli.

Q. What passed at this interview?

A. I told Mr. Pickersgill that I had heard that the note or the notes were in the hands of a broker, for sale. Mr. Pickersgill acknowledged that he was perhaps wrong; that I ought not to pay so much attention to those things which were done daily; that I might rely upon it the notes should go back to his portfolio, and there remain. I told him that I was astonished that they ever did leave his portfolio. Mr. Pickersgill said, as well as I can remember, that agreeably to his contract with Mr. Caselli, he had a right to dispose of one of them. I replied that it was none of my business; that the notes had been given for a special purpose, and that even if he was right, it would be his duty to present it to me for discount, which I should have done, rather than have seen my name or the name of my firm hawked about.

Cross-examined:

Q. What was the time (giving as nearly as possible the exact day) when Caselli asked you to endorse these notes, and at what place did that request take place?

A. It would be rather difficult for me to say exactly the date; but I very well remember it was on a very busy day with us, most likely

88 on the arrival of a steamer; it must have been the latter part of May, about the 20th or 26th, at my office, Wall street.

Q. Will you tell me the time when you had the interview with Mr. Pickersgill, after having heard, as you say, that the notes were in the hands of a broker?

A. The day I could not say, but I think only a few days after the notes were endorsed.

Q. At what place did this interview take place, and who were all the persons present at the place?

A. At Pickersgill's office, same place as now, in Wall, near William street, and Mr. Caselli was present. I don't think anybody was present except Messrs. Pickersgill and Caselli and myself, in his private room, back office.

Q. Did you have any other interview with Mr. Pickersgill, about that time, on the same subject?

A. No, I had no more interviews with Mr. Pickersgill.

Q. Have you stated all that Mr. Pickersgill said to you during that interview, in relation to the said notes which you had endorsed?

A. To the best of my recollection, I have.

Direct examination resumed:

Q. At what time, with reference to the time of your endorsing the notes, were you applied to to endorse the notes; was it the same or a different day?

A. The notes were endorsed on the same days I was applied to, two on one day, and the other a few days later.

Q. Were the notes endorsed on the day of their date?

A. I can't say exactly; think they were.

Examined by counsel for other defendants:

Q. When did Mr. Caselli fail and stop payment?

A. I should think on the 6th June, 1844.

Q. Where did your brother, Pierre F. Lahens, and Mr. Gaudard reside in 1844?

A. In Havre, France.

Q. Have either of them been in the United States since the 1st January, 1844?

89 A. No, sir.

Q. Where did your brother, Edouard Ernest Lahens, reside in 1844?

A. In the Island of Guadaloupe.

Q. Did he visit the United States in 1844?

A. He was here in New York in the latter part of November, 1844, and from then until March, 1845.

Q. Was he in the United States at any time before that visit in November, 1844?

A. Yes, sir; he was here in August, 1844.

Q. Was he in the United States at any time before August, 1844?

A. No, sir; never.

Cross-examined by counsel for plaintiffs:

Q. You say that Pierre F. Lahens resided in Havre in 1844; how long did he continue to reside there?

A. Until 1851.

Q. Where did he then go to reside?

A. He was traveling. His general quarters were in Paris.

Q. Prior to 1851, did he, in connection with Mr. Gaudard, transact the business of your house in Havre?

A. Yes, sir.

Q. Where did Edouard Ernest Lahens go when he left here in March, 1845?

A. He returned to Guadaloupe.

Q. How long after that did he continue to reside there?

A. Until 1847, I think.

Q. Where did he then go?

A. To Paris.

Q. Has he resided there ever since?

A. Yes, sir.

The defendants here rested.

The plaintiffs' counsel then called WILLIAM C. PICKERSGILL, one of the plaintiffs, who, being sworn, testified:

90 I am one of the plaintiffs in this suit. During the year 1844 I was a member of the firms of Fielden, Brothers & Co., of Liverpool, and Wm. C. Pickersgill & Co., of New York. The members of those two firms were identical. The partners composing both firms were Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell and myself. The business carried on by the house of Fielden, Brothers & Co., of Liverpool, was that of general merchants. They sold produce and merchandise, which we influenced to their address. The house of W. C. Pickersgill & Co. here advanced money on

produce consigned to Fielden, Brothers & Co., and reimbursed themselves by drawing bills on Fielden, Brothers & Co.

I knew Alexander Caselli in 1844. He had been transacting business with me for some time, perhaps a year, perhaps eighteen months; I can't say exactly how long. The general nature of such business was the shipment of cotton and other produce by him to the consignment of Fielden, Brothers & Co.

Q. Did he obtain advances on such consignments, and if so, from whom?

A. He did; from W. C. Pickersgill & Co.

Q. Did you or not, at any time in the spring of 1844, take the drafts of Alexander Caselli upon Fielden, Brothers & Co., for an aggregate amount of £15,000?

A. Yes, sir; I did.

Q. Are those the drafts now shown to you?

(Witness shown ten drafts, (third of each set,) all dated March 25th, 1844, on Fielden, Brothers & Co., drawn by Alexander Caselli, payable to order of Wm. C. Pickersgill & Co., at sixty days after sight, five of them for £2,000, and five for £1,000 each, marked together Exhibit 9.)

A. Those are the drafts. (They were then read in evidence.)

Q. When did Wm. C. Pickersgill & Co. receive those drafts?

A. On their date, 25th March, 1844.

91 Q. Did or not Mr. Caselli receive payment for those drafts from W. C. Pickersgill & Co., and if so, how and when, and to what amount?

A. I paid him the money for them as follows: On the 20th March, 1844, he owed $23,942; that is, I gave him on that day a check for $30,000; on the morning of that day he owed me $49,421, and he gave me bills of lading for 1,641 bales of cotton, per Elsinore, upon which the advance was $55,479, leaving the balance due me, at the close of that day, $23,942.

On the 23d March, 1844, I gave him a check for $30,000. On the 25th I gave him a check for $17,646 01. There was $231 99 interest. Those sums together made $71,820, and that account was settled by those drafts for £15,000 on Fielden, Brothers & Co. These drafts closed that account. That amount of $71,820 was the exact proceeds of the £15,000 drafts, at the current rate of exchange.

Q. How did the account of Mr. Caselli with the house of Wm. C. Pickersgill & Co. stand immediately upon the close of that transaction?

A. The account was balanced; nothing due by either party.

Q. Was either of the Messrs. Fielden ever in this country?

A. No.

Q. Where did they reside in 1844?

A. In Manchester, or the neighborhood of it.

Q. Was your partner Daniel Campbell ever in this country; and if so, when and under what circumstances?

A. I believe he was here when he was a very young man, but it was long before he was my partner.

Q. Has he ever been here since you have been in partnership with him?

A. Never.

Q. Where did he reside and conduct the business of the house during the whole of the year 1844?

A. In Liverpool.

Q. Where did you reside and conduct the business during the same period?

92 A. New York.

Q. State on what account these drafts for £15,000 were taken by you from and paid for to Mr. Caselli?

A. They were taken by the directions of my Liverpool house. They sent out a pro forma statement, showing that it would be safe to make Mr. Caselli that amount of advance upon his cottons sold, and margins on his cotton then remaining unsold.

(The counsel for defendant, Louis E. Lahens, moves to strike out the latter answer as not responsive, and being evidence by one plaintiff of communications between the other plaintiffs and him.

Objection allowed, and answer stricken out. Plaintiffs' counsel excepts.)

Q. Repeated.

A. On account of sales of Mr. Caselli's cotton made, and probable margins of his cotton unsold.

Q. On what basis did you act in fixing the amount which you thus paid to Caselli, and for which you took those drafts?

(Objected to by defendants' counsel for the same reasons as above, and as irrelevant.

Objection allowed, and plaintiffs except.

The plaintiffs' counsel offers to prove—

That on the 23d March, 1844, Mr. Pickersgill received from his house of Fielden, Brothers & Co., of Liverpool, a letter, enclosing a statement of the account of Mr. Caselli, resulting from partial sales and the estimated values of the cotton on hand, and instructing Mr. Pickersgill to authorize Caselli to draw for £15,000 on that account and no more. That immediately after the receipt of that letter Mr. Pickersgill exhibited it, and the statement contained in it, (which is also offered to be produced and proved,) to Mr. Caselli, who had by the same mail received a
93 letter from Fielden, Brothers & Co., containing a similar statement, and that the drafts for £15,000, spoken of by the witness, were delivered by Caselli to Mr. Pickersgill, and received and paid for by the latter in pursuance of the authority contained in the letter to Wm. C. Pickersgill & Co., and that this transaction immediately preceded, in point of time, the commencement of the advances for which the business paper deposited by Caselli, as stated in his deposition, was so deposited; one of the items of those advances being the very next item in the account, under the date of 30th March, 1844.

The defendants' counsel object to such evidence. Objection allowed and the evidence excluded, and the plaintiffs except.

The plaintiffs' counsel now offers to show that on or about the 22d March, 1844, Mr. Caselli received a letter from Fielden, Brothers & Co., dated 4th March, 1844, enclosing to him a memorandum statement of his account, arising from partial sales and the estimated value of the cottons on hand, and informing him that they had authorized Mr. Pickersgill, by the same mail, to cash his drafts to the amount of £15,000 on that account. That Mr. Caselli thereupon called upon Mr. Pickersgill with that letter and statement, and exhibited them to Mr. Pickersgill, and that Mr. Pickersgill accordingly paid to Caselli, and Caselli accepted the amount of those drafts for £15,000 in pursuance thereof; and also offers to account for the non-production of the above-mentioned letter and memorandum statement, and to prove the contents thereof.

The defendants' counsel object to this evidence.

The referees decide that the objection is well taken, and reject the offered evidence. Plaintiffs except.)

WILLIAM C. PICKERSGILL'S examination continued:

Q. When, after the 25th March, 1844, did W. C. Pickersgill & Co.

make the next advance to Mr. Caselli, and what was the amount of that advance?

A. On the 30th March, $20,000. (Produces W. C. Pickersgill
94 & Co.'s check for that advance, payable to Alex. Caselli, endorsed by him, by Etienne Gonin, marked Exhibit Check No. 1.)

Mr. Gonin was Mr. Caselli's man of business, and habitually endorsed the checks payable to his order.

Q. What was the date and amount of the next advance?

A. On 1st April, $20,000. (Produces check for it, marked Exhibit Check No. 2.)

Q. On what account and what security were those two advances of the 30th March and 1st April made?

A. It was an advance on the security of about $31,000 business paper, and the promise of Mr. Caselli to hand in some bills of lading of cotton which was then in course of shipment.

Q. Look at the paper now produced and shown to you, and state from whom and when you received it, and whether the business paper specified in it was the business paper just referred to by you?

A. I received it from Mr. Caselli on the 2d April. It is the business paper to which I referred, and the exact amount is $31,170 04.

(Paper read by plaintiff's counsel. Marked Exhibit No. 10.)

Memorandum of notes.

$1,664	06	due 30th April, by	Amos Leland.
1,061	20	" 5th June,	G. M. Peck.
270	00	" 11th "	Jarvis H. Hills.
900	00	" 12th "	Napier, Fisher & Co.
1,530	22	" 16th "	R. L. Smith & Henderson.
1,061	20	" 21st "	G. M. Peck.
808	20	" 22d "	Gault, Ballard & Co.
1,109	25	" 23d "	Howell & Baker.
835	50	" 23d "	Napier, Fisher & Co.
577	50	" 25th "	H. C. Fisher.
1,061	20	" 5th July,	G. M. Peck.
405	00	" 9th "	Jarvis H. Hills.
95 $835	50	due 13th July, by	Napier, Fisher & Co.
1,045	32	" 27th "	S. D. Hall & Co.
421	20	" 28th "	do.
6,000	00	" 1st Aug.,	S. M. Blake.
4,000	00	" 2d "	S. M. Blake.
238	50	" 12th "	Napier, Fisher & Co.
943	74	" 19th "	Fisher, Furman & Dours.
540	00	" 19th "	Napier, Fisher & Co.
1,105	80	" 22d "	S. D. Hall & Co.
1,020	00	" 31st "	Jarvis H. Hills.
752	32	" 8th Sept.,	Napier, Fisher & Co.
390	00	" 10th "	Jarvis H. Hills.
324	00	" 10th "	Peirce & Valentine.
820	25	" 10th "	S. M. Blake.
550	08	" 6th Oct.,	Chs. H. Carrol.
900	00	" 13th "	W. E. & J. G. Whelan.
31,170	04		

NEW YORK, *2d April*, 1844.

The above paper, amounting to thirty-one thousand one hundred and seventy $\frac{04}{100}$ dollars, left with Messrs. W. C. Pickersgill & Co. as security for repayment of the sum of forty thousand dollars, the receipt of which is hereby acknowledged.

ALEX. CASELLI.

NEW YORK, *April 2d*, 1844.

Q. At the time of the delivery to you by Mr. Caselli of that memorandum, had you or not the business paper specified in it in your possession?

A. The business paper was delivered at the same time as the memorandum. It was enclosed in the memorandum.

Q. Was or not either of those advances of the 30th March and 1st April made, directly or indirectly, upon the security or credit of any balance existing or supposed to exist in favor of Mr. Caselli in Liverpool?

96 (Objected by defendants' counsel, on the ground that the witness has stated upon what those advances were made; also as leading and suggestive, and that it would tend to contradict the testimony of Mr. Pickersgill, already existing in the case.)

Question overruled. Plaintiffs except.

Q. In making that advance to Mr. Caselli, was any reference whatever made or had to any balance existing or supposed to exist in his favor in Liverpool?

(Objected to on the same grounds; question overruled. Plaintiffs except.)

Q. At the time of making these advances, was anything whatever said about any balance existing or supposed to exist in his favor in Liverpool?

A. I cannot swear to what conversation took place on that occasion. I have but a vague idea of it, and might make mistakes. There was nothing to impress it particularly on my mind.

Q. What was the next advance after the 1st April?

A. On the 3d April, $20,000. (Produces check for it, marked Exhibit Check No. 3.)

Q. On the 3d April, and after that last advance, what amount of money did Mr. Caselli owe to William C. Pickersgill & Co.?

A. $60,000.

Q. On that 3d April did you receive from Mr. Caselli any, and if so, what security?

A. He handed us the shipping documents for 852 bales of cotton, (by St. Mark,) upon which, by agreement, the advance was to be $26,198 13.

Q. On what account was the $20,000 advance of that day made?

A. On account of the cotton and securities. It reduced the account to $33,801 87, on account of which we held the business paper amounting to $31,170.

Q. When did you make the next advance to Mr. Caselli, and what was the amount?

A. On the 4th April, $24,000. (Produces check for it, marked Exhibit Check No. 4.)

Q. On what agreement and security was that advance made?

97 A. On the security of the business paper already held by me, and whatever balance there might be due him in Liverpool, and on the promise of more shipments of cotton.

Q. When did you make him the next advance, and how much?

A. On the 5th April, $20,000. (Produces check for it, marked Exhibit Check No. 5.)

Q. Did you, at the time of making that advance on 5th April, receive any, and what securities from Mr. Caselli?

A. I received shipping documents for 476 bales of cotton, per ship Blackness, the agreed advance upon which amounted to $17,000; 1,213 bales per Nile, the agreed advance on which was $37,650; and 73 bales per Diadem, agreed advance on which was $2,670.

Q. What was the balance which remained due by Mr. Caselli to Wm. C. Pickersgill & Co., after the receipt of those shipping documents, and the applications of the amounts you have stated, as agreed advances on those shipments, to his credit?

A. $20,481 87.

Q. When did you make your next advance to him, and what amount?

A. On the 6th April, $5,000. (Produces check for it, marked Exhibit Check No. 6.)

Q. On what security was that advance made?

A. On the security of the business paper. I mean the $31,000.

Q. When was your next advance, and how much?

A. On the 8th, $3,000. (Produces check for it, marked Exhibit Check No. 7.)

Q. On what security was that last advance made?

A. On the same business paper.

Q. When, after the 8th April, did you next receive any additional securities from Mr. Caselli, and what were they?

A. On the 10th April I received from him shipping documents for 943 bales cotton, per ship Brothers, the agreed advance upon which was $29,030; also, for 500 bales, per Yorkshire, the agreed advance on
98 which was $15,030—making a total of $44,060—on account of which I gave him a check, on same day, for $30,000, (produces check, marked Exhibit Check No. 8,) and his account was credited with the balance of the advance, $14,060.

Q. What balance remained due from Mr. Caselli to W. C. Pickersgill & Co. after that had been done?

A. $14,421 87.

Q. Was any, and if so, what amount of interest charged to his account on or about 12th April?

A. On that day there was charged to him $13 09, for interest; making the balance against him $14,434 96.

Q. Did you receive any, and what securities from Mr. Caselli, on the 12th April?

A. Shipping documents for 144 bales cotton, per Toronto, agreed advance on which was $5,664 96, which was credited to his account, leaving a balance due of $8,770.

Q. When did you make your next advance to Caselli, and what amount?

A. $20,000, on 13th April. (Produces two checks for it, marked Exhibits Checks Nos. 9 and 10.)

Q. At the time of that advance, did you receive any, and what additional securities, from Caselli?

A. On the same day, 13th, I received shipping documents for 450 bales, per Huron, agreed advance on which was $11,845; and 487 bales, per Lehigh, agreed advance on which was $11,450, amounting together to $23,295, leaving a balance due by Caselli, after crediting that amount to him, of $5,475.

Q. When did you make your next advance to him, and how much?

A. The next was on the 15th April, $25,000. (Produces two checks, $20,000 and $5,000, marked Exhibits Checks Nos. 11 and 12.)

Q. Did you, on 15th April, receive any and what additional securities from Caselli?

A. He handed us $8,202 89 more business paper, and this memorandum was handed with that business paper, and enclosing it.

99 (Memorandum marked Exhibit No. 11 read.)

Memorandum of notes.

$752	32	due 8th August,	by Napier, Fisher & Co.
270	00	" 13th "	by Jarvis H. Hills.
2,735	70	" 5th Sept.,	by Lelland & Guion.
803	25	" 14th "	by S. M. Blake.
840	00	" 21st "	by Napier, Fisher & Co.
826	50	" 22d "	by G. M. Peck.
840	00	" 1st Oct.,	by Horace Plimpton.
1,135	12	" 9th "	by H. C. Fisher & Co.
$8,202	89		

NEW-YORK, *April* 15th, 1844.

Q. Look at the letter now shown you, and say whether that letter accompanied the memorandum, Exhibit 11, and the business paper enclosed in it?

A. It did.

Q. State how and to what extent Etienne Gonin had acted for Mr. Caselli, as his agent, in transacting his business, in the course of your transactions with him, prior to the 15th April, 1844?

A. He was his cashier, and held his power of attorney, and took an active management in his business, in the financial part.

Q. Did you ever see any power of attorney from Mr. Caselli to Mr. Gonin?

A. I never saw any.

Q. Had you any personal knowledge, apart from what you heard from others, of the existence of any such power of attorney?

A. I had not.

Q. Please to state whether Mr. Gonin had, prior to the 15th of April, acted to any, and if so, to what extent, for Mr. Caselli, in obtaining advances from your house?

A. He acted as his cashier. He had been into my office every two or three days about the business, which was making advances
100 either on the cotton or on the business paper.

Q. In whose handwriting is the signature to the letter now shown you?

A. In Mr. Gonin's.

(Letter offered by Mr. Larocque, signed Etienne Gonin, dated April 15th, directed to W. C. Pickersgill.)

Letter read, marked Exhibit No. 12.

DEAR SIR: Will you have the goodness to send me a check for $25,000?

Mr. Caselli is unwell to-day, and unable to attend as usual to his money matters, or else he would have called upon you himself.

I beg to hand you bills of lading for 450 bales of cotton, and business paper to the amount of $8,202 89. I was in hopes to give you more bills of lading to-day, but I shall not be able to get them before to-morrow.

Yours, very resp'y,

ETIENNE GONIN.

APRIL 15th.

W. C. PICKERSGILL, Esq.

Q. When was your next advance make to Mr. Caselli, and what was the amount of it?

A. On the 17th April, $25,000. (Produces check given for that advance, marked Exhibit Check No. 13.)

Q. On the 17th April, did you or not still retain possession of the $31,170 04 and $8,202 89 business paper?

A. Yes; we held $40,000 of business paper on that day, and, in addition, we held $15.000 of bonds or notes of Mr. Osbourne, of Virginia. The $40,000 was the same business paper, composed of the $31,170 04 and the $8,202 89.

Q. On that day did you hold any, and if any, what other business paper that you had received from Mr. Caselli?

101 A. I held $15,000 besides of the notes or bonds of Mr. Osbourne, of Virginia, as already stated.

Q. Are you able to specify the precise day on which you received those $15,000 of notes or bonds?

A. No.

Q. To the best of your recollection, when did they come into your hands?

A. About the middle of April.

Q. When did you make the next advance to Mr. Caselli, and what was the amount of it?

A. On the 22d of April; $10,000. (This is the check for that advance, marked Exhibit Check No. 14.)

Q. Were or not receipts given to you by Mr. Caselli for these several advances?

A. Yes; these are the receipts. (Eleven in number, on five pieces of paper, marked Exhibits Nos. 13 to 23, both inclusive, according to their respective dates.)

(Receipts read:)

Received, New York, March 30th, 1844, from Messrs. W. C. Pickersgill & Co., twenty thousand dollars as an advance on cotton to be shipped to Liverpool.

$20,000. p. pr. AL. CASELLI,
ETIENNE GONIN.

Received, New York, April 3d, 1844, from Messrs. W. C. Pickersgill & Co., twenty thousand dollars, as an advance on cotton now in the course of shipment, or on board ships "Blackness," "Brothers," and "Nile," hence to Liverpool.

$20,000. p. pr. AL. CASELLI,
ETIENNE GONIN.

Received, New York, April 4th, 1844, from Messrs. W. C. Pickersgill & Co., twenty-four thousand dollars, as an advance on cotton to be shipped to Liverpool.

$24,000. p. pr. AL. CASELLI,
ETIENNE GONIN.

102 New York, 5th April, 1844. Rec'd of W. C. Pickersgill & Co., twenty thousand dollars, as an advance on cotton to be shipped to Liverpool.
$20,000. p. pr. AL. CASELLI,
ETIENNE GONIN.

Received, New York, April 6th, 1844, from Messrs. W. C. Pickersgill & Co., five thousand dollars, as an advance on cotton to be shipped to Liverpool.
$5,000. p. pr. AL. CASELLI,
ETIENNE GONIN.

Received, New York, April 8th, 1844, from Messrs. W. C. Pickersgill & Co., three thousand dollars, as an advance on cotton to be shipped to Liverpool.
$3,000. p. pr. AL. CASELLI,
ETIENNE GONIN.

Received, New York, April 10th, 1844, from Messrs. W. C. Pickersgill & Co., thirty thousand dollars, as an advance on cotton to be shipped to Liverpool.
$30,000. p. pr. AL. CASELLI,
ETIENNE GONIN.

New York, 13 April, 1844. Rec'd of W. C. Pickersgill & Co., twenty thousand dollars, as an advance on cotton to be shipped to Liverpool.
$20,000. p. pr. AL. CASELLI,
ETIENNE GONIN

New York, 15 April, 1844. Rec'd of W. C. Pickersgill & Co., twenty-five thousand dollars, as an advance on cotton to be shipped to Liverpool.
$25,000. p. pr. AL. CASELLI,
ETIENNE GONIN.

New York, 17 April, 1844. Rec'd of W. C. Pickersgill & Co., twenty-five thousand dollars, as an advance on cotton to be shipped to Liverpool.
$25,000. p. pr. AL. CASELLI,
ETIENNE GONIN.

103 New York, 22 April, 1844. Rec'd of W. C. Pickersgill & Co., ten thousand dollars, as an advance on cotton to be shipped to Liverpool.
$10,000. p. pr. AL. CASELLI,
ETIENNE GONIN.

Q. Subsequent to the payment of the £15,000 to Mr. Caselli, and in the latter part of March or beginning of April, did or not Mr. Caselli make applications to you for further payments or advances on account of his property in Liverpool or its proceeds?

(Defendants' counsel objected to the question as leading and irrelevant. Question overruled, Emmet dissenting. Plaintiffs except.)

Q. In the interval between the 30th of March and the 22d of April, were any applications made to you by Caselli for advances upon consideration or security different from those upon which you have testified

that the advances to him during that period were made, and what was done in reference to such applications?

A. Caselli applied to me to advance him money on the probable profits of his shipments, which I refused, as my partner wrote to me that it would not be safe to make further advances on the property in Liverpool.

(Defendants' counsel move to strike out all after the word "refused." Motion to strike out that part of the answer allowed. Plaintiffs except.)

Q. Did you state to Mr. Caselli any, and what reason for such refusal?

(Objected to, that it does not affect the defendants. Decision suspended until next meeting, when the referees decided that the last question to Mr. Pickersgill be overruled. Plaintiffs except.)

Q. Please to state how it occurred that your advances to Caselli, between the 30th March and 22d April, both inclusive, of which you have given the particulars, exceeded by about $10,000, or there-
104 abouts, the securities upon which you have testified that they were made, exclusive of the bills of lading for the cotton.

A. My partners in England sent me out a statement showing that there would be about £4,000 due to Mr. Caselli after paying him the £15,000, for which he drew the bills; that most of the £4,000 would be absorbed by interest due by Mr. Caselli; Mr. Caselli's account being a valuable one, I was willing to take the risk of $10,000, hoping that the whole of it might not be so absorbed.

Motion to strike out this answer denied.

The plaintiffs' counsel produces the letter referred to by the witness, and offers it, to show by it, in connection with Mr. Pickersgill's evidence, that such a statement was made to Mr. Pickersgill, without making such letter evidence of the truth of its contents.

Defendants' counsel object that the letter cannot be received in evidence, except as evidence in the cause, including its contents, and that a letter from Mr. Pickersgill's partners to himself cannot be admitted as evidence.

Objection allowed and evidence excluded.

Plaintiffs except.

Q. Please to state when the mail, by the steamer which sailed from Liverpool on 3d April, 1844, was delivered in New-York.

A. On the 23d April.

Q. Please to state when the letters, which left Liverpool on the 18th April, 1844, were delivered in New-York.

A. On the 7th of May.

Q. By what steamers, and at what intervals, were Fielden, Brothers & Company's pro forma statements of Caselli's accounts to Caselli and W. C. Pickersgill & Company received in the spring of 1844?

A. On the 24th or 25th of March I received their statement, sent out by the steamer of 4th March; on 23d April I received their statement by steamer of 4th April; on 7th May I received statement they sent by steamer of 18th April.

105 Q. State what you know as to the receipt or non-receipt of such pro forma statements by Mr. Caselli, and the dates and manner of their receipt.

A. They were sent by the same steamers that I got duplicates by. He came to me and conversed about the statements. I can't swear to every one; one, I think, I can; it has got some figures which would enable me, I think, to identify it.

Q. Did or not Mr. Caselli produce to you those duplicate statements?

Objected to as leading and irrelevant.

A. I cannot remember whether he produced them to me.
Q. State in whose handwriting this letter is?
A. Mr. Caselli's, and the signature is his.
Larocque offers the letter, dated 20th May, 1844.
Defendants' counsel objects, that J. Lahens & Co. are no parties to the letter; that Caselli's attention was not called to this letter on his examination.
The plaintiffs' counsel offers this as the first of a series of letters from Caselli, which ended in giving the notes in question.
The referees decide to admit letter offered by plaintiffs.
Letter read, marked Exhibit No. 24:

MY DEAR SIR: I do not know whether you have got any statement of acct. from Messrs. Fielden, Brothers & Co.; I forgot to ask you on 'Change. If you had, perhaps you would feel authorized to allow me some facilities of which I am in need. If you have not, I would then ask you, as a particular favor, to place at my disposal the equivalent of
7 or £8,000, which I would consider as a loan, and not to saddle
106 you with securities, which, however good, give you trouble, and about which you know but little. I would propose to give you my note, say at sixty days, endorsed by J. Lahens & Co., who, out of friendship to me, and a very moderate comm'n, will take upon themselves the trouble of receiving the securities.
By this you can greatly oblige me; and although you have no other interest in it, I hope it will be sufficient; and I know of no plainer or safer mode of settlement. If you did, suggest it, for my sake, and I shall meet your views.
I remain, very truly, dear sir, yours,
ALR. CASELLI.

MONDAY, *May 20th.*
W. C. PICKERSGILL, Esq.

Plaintiffs' counsel also reads Caselli's answer to fourth question in his examination *de bene esse.*
(It is admitted that Henry Paillet, mentioned in that answer, died two or three years ago.)
Plaintiffs' counsel calls upon the counsel for Louis Emile Lahens to produce answer of Mr. Pickersgill to Caselli's letter of 20th May, 1844, in pursuance of notice given, who admits the notice, and replies that he has it not, and has never seen it.

Examination continued:

Q. When did you receive that note of 20th May, 1844, from Mr. Caselli?
A. On the same day.
Q. Did you answer it in writing?
A. I did.
Q. Look at this paper, and state whether it is a copy of that answer.
(Objected to on the same grounds as the objection to the previ-
107 ous letter, and, in addition, that the foundation has not been laid for secondary proof of the private notes of Mr. Pickersgill to Mr. Caselli.)
Mr. Van Wagenen states, and it is admitted by counsel for the other defendants, that due search was made among the papers of Henry Paillet since his death, and some letters found from Fielden, Brothers & Company among them, but no letters found signed Wm. C. Pickersgill,

except the one dated 25th May, 1844, which has already been put in evidence.

Objection overruled.

Defendants' counsel except.

A. It is.

Answer read, dated 20th May, 1844, (like objection and exception,) marked Exhibit No. 25, plaintiffs.

MY DEAR SIR: I am this moment in receipt of your note. F. B. & Co. have not sent me any statement of your account, and if the L'pool market takes the unfavorable course I am afraid it will do, the last six thousand bales you shipt will not cover the advances; I must, therefore, decline at present granting you any additional facilities.

If agreeable to you, I should feel obliged by your giving me your note at 60 or 90 days' sight, endorsed by Messrs. J. Lahens & Co., for the amount you owe me over and above the business paper we hold, and I then would return you the Virginia bonds.

I remain, yours, very truly,

W. C. PICKERSGILL.

20th MAY, 1844.

A. CASELLI, Esq.

Q. Look at this paper, and say what it is.

A. Copy of a note I wrote to Caselli on 24th May, 1844.

Received subject to same objection and exception.

(This note marked Exhibit No. 26, plaintiffs.)

108 Q. Look at this paper; what is it?

(Like objection as to No. 24, &c., and exception.)

A. Mr. Caselli's answer to my note of 24th May, 1844.

(Like objection as to No. 24, and exception.)

Mr. Van Wagenen objects, in addition, that these two notes relate to an arrangement made between Caselli and Pickersgill, which never was consummated between them, nor are the notes in this suit in accordance with it.

Objections overruled.

Defendants' counsel except.

Caselli's answer, marked Exhibit No. 27, plaintiffs.

Exhibits Nos. 26 and 27, read for plaintiffs.

EXHIBIT No. 26.

MY DEAR SIR: I am afraid, from the remark you made when you went out of my office this morning, that you misunderstood me yesterday, in respect to the securities I loaned you yesterday; it was as follows:

You were to give me, in place of the said securities, good business paper to the amount of $27,500.

J. Lahens & Co.'s two notes, with your endorsement, one at 60 days and the other at 90, for $13,750 each, and your due bill for the balance of the money we have lent you.

These securities I expected to have received from you yesterday. If, therefore, it is not convenient for you to send them me this morning, please return me the securities I loaned you yesterday.

I remain, yours very truly,

W. C. PICKERSGILL.

24th MAY, 1844.

A. CASELLI, Esq.

EXHIBIT No. 27.

MY DEAR SIR: We were perfectly understood without your note of this morning. The only privilege I claim is to have a chance to
109 see what I can do with part of the paper, and attend to some very pressing business first.
I remain, yours, very truly,

ALEX. CASELLI.

FRIDAY, 24*th May*, '44.
W. C. PICKERSGILL, Esq.

Q. In whose handwriting is the date of Exhibit No. 27, as it appears?
(Same objection and exception.)
A. In mine.
Q. State, if you can, when you put that date there?
(Same objection and exception.)
A. I presume at the time I received the note, but I could not say the day or hour, now 14 years ago, except from my usual custom to mark on papers when received. The correction from 5 to 4 in the date was made at the same time undoubtedly.
Q. Look at the four papers now shown you, and state what they are.
A. They are notes between Mr. Caselli and me of the 25th May, 1844; two are copies from me to him, and the two originals from him to me.
Plaintiffs' counsel offers them.
Same objection as to Exhibits 24 and 25, &c., but notice to produce admitted. Overruled.
Defendants except.
Plaintiffs read, 1st. Pickersgill to Caselli, marked Exhibit No. 28:

MY DEAR SIR: I am this moment in receceipt of your favor of yesterday, and am glad to find you understood the loan of the business
110 paper the same as I did. As a matter of business, I must request that you will either return me the $55,000 of collaterals this morning, (as per promise,) or that amount in money.
I remain, yours, very truly,

W. C. PICKERSGILL.

SATURDAY, 25*th May*, 1844.
A. CASELLI, Esq.

2d. Caselli's answer, No. 29:

MY DEAR SIR: In order to please you, I have left my desk and procured the signature of J. Lahens & Co. to the two notes herein enclosed, which closes this part.
As to the paper, I repeat, that I must first have a chance to see what part of it may be turned to account. I will send you everything as soon as it comes to me, in order.
Meanwhile, remain, in haste, yours, very truly,

ALEX. CASELLI.

SATURDAY, *May 25th*.
W. C. PICKERSGILL, Esq.

3d. Pickersgill to Caselli, No. 30:

MY DEAR SIR: I have just received your note containing your notes

endorsed by Messrs. J. Lahens & Co., say one for $13,500, the other for $14,000, to replace in part the securities we handed you on Thursday.

The business paper, say $27,500, I shall look for on Monday.

You must be well aware, that with no one except yourself should I have done such an unbusiness-like transaction as to deliver up one set of securities until I had received another in their place, and, under
111 such circumstances, I think you ought to have sent me the balance of the securities ere this.

I remain, yours, very truly,

W. C. PICKERSGILL.

SATURDAY, 25th *May*, 1844.
A. CASELLI, Esq.

4th. Caselli's answer, No. 31:

MY DEAR SIR: In answer to your note, just handed me, I beg to state that I have certainly shown my good will by giving you at once all I could procure, and this merely to please you, for there was no necessity for such hurry in the case. However, I repeat, my intention is to satisfy you on every point, as it has always been my practice, and the sooner the better; if it could be done to-night, it would be done.

I remain, yours very truly, in haste,

ALEX. CASELLI.

SATURDAY.
W. C. PICKERSGILL, Esq.

Q. Did you not, in point of fact, receive the two notes endorsed J. Lahens & Co., described in Exhibits Nos. 29 and 30, in Mr. Caselli's note, marked Exhibit No. 29?

A. I did.

Q. Look at those two papers, and say what they are.

A. One is a copy of a note from me to Caselli, and the other is his answer, both dated 30th May, 1844. (Offered.)

MY DEAR SIR: You remember the old adage, "short reckonings make long friends." I shall, therefore, feel obliged if you will send me the securities you promised in exchange for those I gave you the other day.

I remain, yours very truly,

W. C. PICKERSGILL.

30th May, 1844.
A. CASELLI, Esq.

MY DEAR SIR: Acknowledging the receipt of your note of this
112 morning, I now beg to remit you my note endorsed by Messrs. J. Lahens & Co., for balance of securities. I would have sent it you yesterday, had not these gentlemen been too much engaged to attend to my own matters.

With many thanks, I remain dear sir, yours very truly,

ALEX. CASELLI.

Read.—1. Pickersgill's note to Caselli, marked Exhibit No. 32. 2. Caselli's answer, No. 33.

Q. In whose handwriting was the memorandum "received 31st May, 1844," partially erased on the face of Exhibit No. 33?

(Same objection and exception by defendants.)

A. In mine.

Q. Can you state when that memorandum was made or partly obliterated.

(Like objection, &c., and exception by defendants.)

A. It must have been put on the time it was received.

Q. Did you or not receive with that note, Exhibit No. 33, the note endorsed by J. Lahens & Co., described in it?

(Same objection and exception by defendants.)

A. I did. The note for $21,221 43 in suit.

Q. Did you receive from Mr. Caselli any, and if any, what securities in lieu of the difference between the aggregate amount of the three notes of Caselli, endorsed J. Lahen & Co., and the business paper returned to Caselli?

(Same objection, and as irrelevant, &c., and exception by defendants.)

A. I did. I received $6,278 57, business paper, on the 27th May, from him.

Q. Look at the paper now shown you, and say what it is?

(Same objection, and as irrelevant. Overruled. Defendants except.)

A. It is a list of the business paper, and is signed by Mr. Caselli.

113 It accompanied the $6,278 57 business paper.

(Same objection to reading, &c., and exception by defendants.)

Marked Exhibit 34, plaintiffs, and read:

Memorandum of notes.

$761	09	due	15th	June,	drawn	by	Chas. H. Carroll.
270	00	"	19th	"	"	"	H. Plimpton.
577	50	"	25th	"	"	"	H. C. Fisher & Co.
315	86	"	3d	July,	"	"	Chas. J. Hart.
577	50	"	5th	"	"	"	H. C. Fisher & Co.
564	50	"	12th	Aug.,	"	"	" "
564	50	"	1st	Sept.,	"	"	" "
122	42	"	19th	"	"	"	Anson, Denter & Co.
840	00	"	1st	Oct.,	"	"	Horace Plimpton.
550	08	"	6th	"	"	"	Chas. H. Carroll.
1,135	12	"	9th	"	"	"	H. C. Fisher & Co.
6,278	57						

The above, amounting to six thousand two hundred and seventy-eight dollars and fifty-seven cents, left with Messrs. Wm. C. Pickersgill & Co., as collateral security.

NEW YORK, 27th *May*, 1844.

ALR CASELLI.

Q. When you handed the business paper which you held to Mr. Caselli, on or about the 23d May, what passed between you and him?

A. Mr. Caselli promised to hand me J. Lahens & Co.'s notes for $27,000, and the balance in good business paper.

Q. In case of his failure to do this, what, if anything else, did he agree to do?

A. He was to return me the business paper which I handed him.

Q. At the time of the correspondence between yourself and Mr.

114 Caselli, which has been proved, did you know the firm of J. Lahens & Company?

A. Only by name.

Q. Did you know personally any of the members of the house?

A. No; I did not.

Q. Did you or not know where any of the members of the house resided, or were at that time?

A. I knew they had a house at Havre and in New York, but I did not know which brother resided at Havre and which in New York.

Q. Please to state the whole extent of your own personal knowledge at the time of the receipt of the notes endorsed by J. Lahens & Co., as to the residences and whereabouts of any of the individual members of that firm.

A. I had no personal knowledge about the firm at all, or about their residences, or whereabouts of any of the individual members.

Q. What, if anything, did you know as to the credit and standing of the firm in this city?

A. I knew that they stood very well; that was the general opinion.

Q. What, if anything, did you know as to the nature of the business which the firm was transacting in New York?

A. Doing a French commercial banking business. I never had a transaction with them before I received these notes. It was only from general report and reputation that I knew what their business was.

Q. Please explain what you mean by a French commercial banking business.

A. A house that grants credits, buys and sells exchange, advances their notes, money or bills of exchange on merchandise or other securities. I used the word French in contradistinction to English business, because they were in the French business; their business appertained chiefly to France; at least that was what I understood it to be.

Q. Do you recollect being called upon by Mr. Caselli and Mr. Louis Emile Lahens, after you received the notes in question?

115 A. Yes.

Q. State, as nearly as you can, how soon after you received them.

A. It was before the maturity of the one which had 60 days to run.

Q. Please to state, as nearly as you can, all that occurred in that interview.

A. Mr. Lahens asked me if I had put the notes in the hands of a broker for sale. I told him I had not; but I had inquired of a broker what they would sell at. He said if I wanted the money he would discount one of the notes. As I did not want the money, I declined to let him discount it, and receive the money.

Q. Did you state to Mr. Lahens, in that interview, any, and if so, what motive as having influenced you in making that inquiry through a broker?

A. I cannot remember whether I stated to him any reason for making the inquiry through a broker.

Q. Was anything said or any claim made by them, or either of them, in that interview, as to there being anything in the nature of the transaction in which you had received those notes which affected the right of using them?

A. Not that I remember.

Q. Please look at the ten notes now shown you, and say what they are.

A. Part of the business paper I handed over to Mr. Caselli in exchange for his notes, endorsed by J. Lahens & Company.

Q. Please explain when and from whom you received them back into your possession?

A. After Messrs. Lahens & Company had refused to pay their endorsements, and from the makers of the notes.

Q. Before or after the maturity of the notes, respectively, which you so received back?

A. After their maturity.

Q. Had they or not the bank stamps of payment on them when you so received them back?

116 A. They had the bank stamps of payment on them when I received them back.

Q. Had they or not the name of J. Lahens & Company endorsed thereon, respectively, when you so received them back?

A. They were endorsed by J. Lahens & Company when I received them back.

The ten notes offered by plaintiffs' counsel, and marked Exhibits Nos. 35 to 44, both inclusive, and read.

$405. NEW YORK, *January 6th*, 1844.

Six months after date, I promise to pay to the order of A. Caselli, four hundred and five dollars, value received.

[Bank stamp.] JARVIS H. HILLS.

[Mark of payment.]

(Endorsed:) p. pr. AL. CASELLI,
ETIENNE GONIN,
J. LAHENS & CO.

$1,020. NEW YORK, *February 28th*, 1844.

Six months after date, I promise to pay to the order of A. Caselli, ten hundred and twenty dollars, for value received. Payable at 136 Pearl st.

[Bank stamp.] JARVIS H. HILLS.

[Mark of payment.]

(Endorsed:) p. pr. AL. CASELLI,
ETIENNE GONIN,
J. LAHENS & CO.

$835 $\frac{50}{100}$. NEW YORK, *20th November*, 1843.

Seven months after date, we promise to pay to the order of Mr. A. Caselli, eight hundred thirty-five $\frac{50}{100}$ dollars, value received.

[Bank stamp.] NAPIER, FISHER & CO.

[Mark of payment.]

(Endorsed:) p. pr. AL. CASELLI,
ETIENNE GONIN,
J. LAHENS & CO.,
A. C. KOSSIRE & CO.

117 $270. NEW YORK, *December 8th*, 1843.

Six months after date, I promise to pay to the order of A. Caselli, two hundred and seventy dollars, value received.

[Bank stamp.] JARVIS H. HILLS.

[Mark of payment.]

(Endorsed:) p. pr. AL. CASELLI,
ETIENNE GONIN,
J. LAHENS & CO.,
A. C. KOSSIRE & CO.

$390. NEW YORK, *March 7th*, 1844.

Six months after date, I promise to pay to the order of A. Caselli, three hundred and ninety dollars, for value received. Payable at 136 Pearl st.

[Bank stamp.] JARVIS H. HILLS.

[Mark of payment.]

(Endorsed:) p. pr. AL. CASELLI,
ETIENNE GONIN,
J. LAHENS & CO.,
A. C. KOSSIRE & CO.

$900. NEW YORK, *9th Dec'r*, 1843.

Six months after date, we promise to pay to the order of Mr. A. Caselli, nine hundred dollars, value received.

[Bank stamp.] NAPIER, FISHER & CO.

[Mark of payment.]

(Endorsed:) p. pr. AL. CASELLI,
ETIENNE GONIN,
J. LAHENS & CO.,
A. C. KOSSIRE & CO.

$540. NEW YORK, 16*th Feb'y*, 1844.

Six months after date, we promise to pay to the order of Mr. A. Caselli, five hundred and forty dollars, value received.

[Bank stamp.] NAPIER, FISHER & CO.

[Mark of payment.]

(Endorsed:) p. pr. AL. CASELLI,
ETIENNE GONIN,
J. LAHENS & CO.

118 752\frac{32}{100}$. NEW YORK, *5th March*, 1844.

Six months after date, we promise to pay to the order of Mr. A. Caselli, seven hundred fifty-two $\frac{32}{100}$ dollars, value received.

[Bank stamp.] NAPIER, FISHER & CO.

[Mark of payment.]

(Endorsed:) p. pr. AL. CASELLI,
ETIENNE GONIN,
J. LAHENS & CO.

238\frac{50}{100}$. NEW YORK, *9th Feb'y*, 1844.

Six months after date, we promise to pay to the order of Mr. A. Caselli, two hundred and thirty-eight $\frac{50}{100}$ dollars, value received.

[Bank stamp.] NAPIER, FISHER & CO.

[Mark of payment.]

(Endorsed:) p. pr. AL. CASELLI,
ETIENNE GONIN,
J. LAHENS & CO.

835\frac{50}{100}$. NEW YORK, 10*th Dec'r*, 1843.

Seven months after date, we promise to pay to the order of Mr. A. Caselli, eight hundred thirty-five $\frac{50}{100}$ dollars, value received.

[Bank stamp.] NAPIER, FISHER & CO.

[Mark of payment.]

(Endorsed:) p. pr. AL. CASELLI,
ETIENNE GONIN,
J. LAHENS & CO.

Q. Are you acquainted with the signature of J. Lahens & Company, so as to be able to state whether those endorsements are their genuine signatures?

A. I never saw any of the partners of J. Lahens & Company write. I believed and still believe them to be their signatures.

Q. Please state the course of the quotations of the Liverpool cotton market, received in New York, from the month of December, 1843, until August, 1844.

119 (Objected to by defendants' counsel, on the ground that it would be mere secondary evidence upon a matter in regard to which primary evidence exists in the commission, and as being irrelevant.

Objection allowed and evidence excluded, and plaintiffs' counsel excepts.)

Mr. Pickersgill states, that he finds that the letter from Fielden Brothers & Co., by the steamer of the 4th of March, 1844, was received by him on the 23d of that month, as a correction to be made in his previous evidence.

Cross-examined by counsel for Louis Emile Lahens:

Q. Were the advances stated by you to have been made on the 30th of March and on the 1st April, 1844, applied for by Mr. Caselli or by Mr. Gonin, which?

A. Without reference to the notes or letters, I cannot remember which.

Q. Can you state as to either of the subsequent advances, that either of them was negotiated for by Mr. Gonin, of your own knowledge?

A. No; I can't remember now.

Q. Were not Mr. Gonin's transactions with you strictly limited in practice to his capacity of cashier of Mr. Caselli, receiving, giving, and endorsing checks?

A. Yes; he wrote me some notes, asking for money on account of Caselli, which I consider was part of his business as cashier.

Q. Did he ever negotiate with you the terms and conditions upon which advances should be made on produce or otherwise?

A. Mr. Gonin was merely Mr. Caselli's cashier, to receive and pay money for him, in pursuance of arrangements made by Caselli. He may have inquired from me at times whether I would advance more money than I had agreed to do; but I have no recollection that he ever did.

Q. You have stated, that as to the advances of the 30th March
120 and 1st April, you could not swear as to whether any conversation occurred upon the subject of a supposed balance in Liverpool; can you say, that as to the advance on the third of April, no conversation certainly took place as to such supposed balance being a partial basis of that advance?

A. I can't remember. I refused to make to Mr. Caselli any further advances on any supposed balance in Liverpool, but I cannot recollect the day upon which any particular conversation took place.

Q. You have stated, that as to the advance of 4th April of $24,000 made to Mr. Caselli, a portion of the security was whatever balance there might be due him in Liverpool; how is it that you are able to identify this as to that advance and not know whether it was likewise security for previous advances?

A. If the security for any of the advances had not been sufficiently good, and there had been a balance in Liverpool, we should have held on to that balance.

Q. Repeated.

A. I can only answer as I did before, that I would have taken the balance in Liverpool, if there was any, for any advances.

Q. Repeated.

Waived. { (Plaintiffs' counsel objects to the question, on the ground that it assumes a state of facts that does not exist. That it assumes that the witness does not know what he has not testified that he does not know; and, also, that it has been fully answered already.)
(The counsel for Louis Emile Lahens alters the question by putting in the words "agreed to be," between "likewise" and "security," on last line.)
(Plaintiffs' counsel objects to the question as altered, on the ground that Mr. Pickersgill has not stated that any balance was agreed to be security for any of the advances.
Objection overruled. Plaintiffs' counsel excepts.)

121 A. My partners wrote me that there would be $10,000 balance, they hoped. In the whole of my advances I kept about that amount above the securities. I considered that that balance would apply to any deficiency on previous advances, as well as subsequent ones, to April 4th. I don't remember any particular agreement with Mr. Caselli on the subject of it.

Q. At the time of the advance of the 6th April, can you state positively that no reference was made, between Mr. Caselli and yourself, to any balance which might exist to his credit in Liverpool?

A. I cannot.

Q. I ask the same question as to the advance of the 8th April?

A. I can't remember any particular conversation on that occasion.

Q. Can you state that no such conversation took place as to such balance as being the basis of advances either on the 10th, 12th, 13th 15th, 17th, or 22d of April, respectively?

A. I cannot state positively.

Q. At what maturity were the Virginia bonds of Mr. Charles F. Osbourne, of $15,000, to which you have referred, drawn; that is, how long had they to run when put into your hands?

A. I cannot remember.

Q. Can you not remember that they had several years to run?

A. I don't think they had, but I really cannot remember. It is near fifteen years since I saw them.

Q. You have stated, that to the best of your recollection they came into your hands about the middle of April; might they not have been placed in your hands on the 2d April?

A. They were not on the list, and therefore I do not think it probable. I do not believe they were.

Q. If they had been given to you on the 3d of April, would they have been on the list?

A. If they had been delivered on the 3d they would not have been on the list of the 2d April.

122 Q. Did you make any entry of the time of their receipt?

A. No; I did not.

Q. Is it not then equally probable that they were received on the 3d April as about the middle of April?

A. It is possible, but I don't believe they were. I believe they were received about the middle of April, as far as I can judge from notes.

Q. Have you any notes which refer to them, so as to help you fix the date?

A. There is a letter which refers to them, but I don't see that there was any note accompanying them, for I have looked for it, and cannot find it.

Q. Was the letter to which you refer written after the bonds were in your hands?

A. Yes.

Q. How does it enable you to fix the time of their receipt as being the middle and not the 3d April, if it furnishes no date of their receipt?

A. (Looks at letter.) It does not enable me to fix any definite day. It shows that it was prior to 17th of April, but not how much prior.

Q. On what day were the $15,000 bonds of Osbourne returned to Caselli?

A. I cannot tell what the day was without looking over the papers.

Q. Were not the two firms of Fielden, Brothers and Company and William C. Pickersgill and Company identical, both in members and the pecuniary interest of each member, and did they not differ alone in title, for the purpose of facilitating their own business?

A. The partners of both firms were the same. The interest of the partners were the same in each firm. It was considered, that as the Fieldens were in England and I was in New York, the firm had better be carried on in England under their name, and in New York under mine.

Q. When did you become a member of these firms?

A. I can't remember the year; I think it was in 1842.

Q. When did Mr. Caselli first make shipments of produce to your house?

123 A. I should think from about 18 months to two years before his failure; probably in 1842; the accounts will show.

Q. On what occasion did he receive money first from the house on the other side, apart from the advances originally made on the produce?

A. I don't think the house on the other side ever made any direct payment; it was all paid by the firm here.

Q. On what occasion did the firm here first make a payment to Mr. Caselli, as of money accruing to him on the other side, and apart from the original advances?

A. When account sales were rendered we would give him the money.

Q. Was it not the invariable course of Mr. Caselli, up to the advance of the £15,000, made on or about 25th March, 1844, on receiving advice that each separate invoice was closed, to receive the balance due him on that invoice, or to settle the difference if against him?

A. Yes; when the account sales were received we paid him over any balance coming to him on that shipment or invoice, or received from him whatever was coming to us; that was our general custom. There may have been incidental cases in which I may have united two or three shipments together, which I can't now remember. If there had been several shipments, some resulting in profit and others in loss, I may have set off the one against the other.

Q. Were not the shipments settled separately and each for itself, and if there were such incidental cases as you have referred to, was it not a mere economy of labor to unite the settlement of several, giving a single check for the balance on either side?

A. Yes; it was to save trouble, to make the accounts more simple.

Q. Did you attend the examination *de bene esse* of Mr. Caselli at my office, the deposition on which has been read in evidence in this case?

A. I attended at your office once when Mr. Caselli was examined, but whether it was the examination you allude to, I am not certain.

124 Q. Who conducted the examination you attended?

A. You, Mr. Van Wagenen, and, I believe, Mr. Larocque.

Q. Had you then in your possession, or under your control, the private notes and copies given in evidence now upon your examination, and marked Exhibits 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33, and the paper marked Exhibit 34?

A. They were all in the hands of my lawyers, Messrs. Griffin & Larocque.

Q. You have stated that you did not put the notes in controversy in this case in the hands of a broker for sale, but only made inquiries of a broker respecting them; are you confident that such was the case?

A. I can remember asking Corning, the broker, what he could sell the paper for, but I do not remember ever letting the paper go out of my possession.

Q. If these notes, or either of them, had been exposed upon the table of Corning for sale, would you not have remembered it?

A. If I had given them to him for sale I think I should have remembered the circumstance, but I know I asked him what he could get for it—at what rate it could be sold.

Q. Can you not state accurately the time of the visit of Mr. Lahens and Mr. Caselli to you on the subject of these notes?

A. I cannot.

Q. Was it not the day but one before the injunction was served on you?

A. I cannot remember.

Q. Was not that injunction served almost immediately after that interview?

A. I have got nothing to place the exact time when the interview took place, and I really forget when the injunction was served.

Q. Did Mr. Lahens ever have any other interview but that one with you?

A. I think not.

125 Q. Did he not express himself indignant that this paper should be offered for sale when he had endorsed it for a specific purpose, and you had no right to use it?

A. He expressed himself annoyed that I had made inquiry to know what the paper could be sold at, and he said if we wanted money he would discount one of the notes, which I don't think he would have done if he had told me that I had no business to use the paper.

Q. Was not his remark, with reference to discounting, made in reply to your statement that perhaps you had a right to consider one of the notes as your own?

A. I don't remember ever making such a statement to him at all.

Q. Was not his remark manifestly ironical, and was it not in substance that it would have been more natural to apply to him to discount the paper, if you wanted to know his credit in market?

A. I did not understand his offer to discount the paper in that shape; I have always thought I was very foolish not to take it.

Q. Were you accustomed, when you held nearly $50,000 of paper of a house with whose credit you were not well acquainted, to refuse their offers to discount the whole or any part of it?

A. The inquiries I made of Corning were satisfactory, and Mr. Lahens offering to discount the paper confirmed the opinion I had of the goodness of the house; and as I did not want the money, I did not accept his offer.

The counsel for Louis E. Lahens moved to strike out this answer, as not responsive to question.

Motion allowed, and question repeated.

A. I should, in such a case, allow the parties to discount their paper.

Q. Did you not reply to the remark of Mr. Lahens, that the paper would return to your pocket-book and remain there; and was not his remark in return, which ended the interview, that it was singular it had ever left it?

A. I don't remember that I used such words, or that Mr. Lahens made such a reply.

126 (Mr. Van Wagenen calls for letter from Caselli to Pickersgill, dated 17th April, 1844. Produced.)

Q. Is this letter the one referred to and consulted by you in giving your answer as to the time of your receipt of the Osbourne $15,000 bonds?

A. Yes.

(Letter offered in evidence by Mr. Van Wagenen, read, and marked Exhibit No. 45.)

MY DEAR SIR: The captain and consignee of the "Nile" will require $3,600 on their freight, which will amount (they say) to 5,000 @ 6,000. Please hand me the bills of lading, in order that I may get their receipt on the back of them.

I enclose—

Bills of lading for 259 bales per "Nile,"
73 " per "Diadem,"
213 " per "St. Mark,"
290 " per "Yorkshire,"
200 " per "Huron," fm. Charleston,

1,035 bales,

besides second copies of the 200 bales per "Lehigh," and 250 bales per "Huron."

You shall have more bills of lading in the course of the afternoon.

Please send me $25,000, and if you retain my $8,000 of paper to complete the $40,000, send me back the two bonds, if you choose.

I remain, dear sir, yours, very truly,

Wednesday. AL'R CASELLI.

W. C. PICKERSGILL, Esq're.

Q. At the time you attended the examination of Mr. Caselli at my office, was he examined as a witness in this controversy?

A. I understood so; I presume so.

127 Q. Were you informed by your counsel that his examination was to be taken as a witness because he was about leaving for California?

A. I was so informed.

Q. Have you yet been able to recollect whether either of the notes in controversy in this case was ever actually in the hands of Mr. Corning, the broker, for sale?

A. I have not.

Q. Was any portion of the business paper, of about $31,000, and about $8,000, heretofore referred to, placed in your hands by Mr. Caselli, surrendered to Mr. Caselli after you received it, until you surrendered it on the 23d May, 1844.

A. To the best of my memory he changed the paper in my possession

perhaps two or three times; it may have been once only. I gave him some back and took some for it. The business paper was not entered in my books, and I am, therefore, unable to specify what changes were made.

Q. When such changes were made, were like amounts of other paper substituted for the paper given up?

A. Yes; of like amounts, as near as possible.

Q. You have stated that some of the original $31,000 and $8,000 notes were several times exchanged for other securities, and that you have no memorandum of such exchanges. Are you able then to say that the paid notes given in evidence by you, and which were among the original $31,000 notes, were surrendered by you on the 23d of May, or whether they had not been previously given up to Mr. Caselli in one of those exchanges to which you have referred?

A. I collected or got the paid notes from the parties while the thing was fresh upon my mind, and, therefore, I feel sure that they were the notes which were surrendered to Mr. Caselli on the 23d of May.

Q. Had you any memorandum by which to make such collection of notes, except the original memoranda, containing the original list of notes?

A. I believe I had, but I cannot find it. I looked over all the papers for it, but cannot find it, therefore I cannot swear to it.

128 Q. Had you these paid notes in your possession at the time of the examination of Mr. Caselli *de bene esse*?

A. I had.

Q. Where was your office during the year 1844?

A. From memory, I removed from Dorr's Building on 1st May, 1844, to over Meiser's stationery shop, in Wall street, near William street, next door to where I am now.

Q. What was about the distance, after 1st May, 1844, between your office and that of J. Lahens & Co.?

A. I don't know where Mr. Lahens's office was in that year.

Direct resumed:

Q. You have stated, in your previous examination, to what extent the two firms of Fielden, Brothers & Co. and W. C. Pickersgill & Co. were identical; please state whether the accounts of the two houses were kept together as one whole account, or were kept separate and distinct.

A. The accounts were kept distinct.

Q. How did the house of W. C. Pickersgill & Co. reimburse itself for advances made to Mr. Caselli on property shipped by him to Fielden, Brothers & Co.?

A. They drew bills for the amounts.

Q. You have been asked as to the time when you became a partner in the house of Fielden, Brothers & Co. and W. C. Pickersgill & Co.; was or not the time stated in your answer the time of the first organization of the two houses?

A. The organization of the present firms was on the 1st January, 1842, but I had been a partner of the Fieldens before, under the firm of Wildes, Pickersgill & Co., of Liverpool.

Q. Besides the £15,000 paid to Mr. Caselli on the 25th March, already testified to, had you or not, in or about the month of January, 1844, paid him a large sum of money, amounting to £10,000?

A. I advanced Mr. Caselli money during that time, but I cannot, without referring to my books, remember or specify any particular amount.

129 Q. Please to state, as nearly as you can from your present recollection, what was the extent, as to amount, of any of the exchanges made of the original $31,000 and $8,000 of business paper, after it was originally deposited with you.

A. I really have got no memory about it. I believe I handed him the $15,000 Virginia bonds, and that after two or three days he returned them to me, and I may have handed him some business paper; but I can swear that I gave him $40,000 of business paper and the $15,000 Virginia bonds on the 23d of May.

Defendants' counsel moves to strike out from Mr. Pickersgill's direct testimony the private correspondence between Mr. Caselli and Mr. Pickersgill, marked Exhibits 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33, on the following grounds:

1st. That Mr. Caselli's attention, on his examination *de bene esse*, was not called to them, although he had been inquired from about them when examined at Matagorda under the commission, when he hadn't them or access to them. And Mr. Pickersgill has testified that this correspondence was in the hands of his counsel when Mr. Caselli was examined *de bene esse* in New-York.

2d. Mr. Lahens is shown to be an endorser without interest in a matter where Mr. Caselli and Mr. Pickersgill had a mutual interest, and in judgment of law Mr. Caselli, in the representations he made, cannot be regarded as the agent of Mr. Lahens.

3d. Both Mr. Caselli and Mr. Lahens testify that no communication whatever on the subject of these endorsements was made by Mr. Caselli previous to the actual making of the endorsements, on 25th May.

4th. Mr. Pickersgill has not shown, by his testimony, that either on 23d May, when he surrendered the business paper, or at any other time, Mr. Caselli informed him that Mr. Lahens had agreed to endorse his notes for a commission, and he made no inquiry of and had no communication with Mr. Lahens upon the subject; and the correspon-

130 dence itself shows that the business paper was not to be placed in Mr. Lahens's hands as security against his endorsements.

The counsel for Louis E. Lahens modifies his motion to strike out Exhibits 24 to 33, by confining it to striking out Exhibits Nos. 24 and 25. (Caselli's letter to Pickersgill and Pickersgill's answer of 20th May.)

The counsel for the other defendants persists in motion to strike out the whole.

Referees decide (Betts dissenting) that the two first, viz, Nos. 24 and 25, should be stricken out, and grant the motion so far, and deny it as to the rest, (Nos. 26 to 33, inclusive.)

Mr. Betts thinks all these exhibits should be stricken out on both grounds urged by defendants' counsel.

Plaintiffs' counsel excepts as to striking out Exhibits Nos. 24 and 25.

CHARLES SAGORY sworn for plaintiffs: I was in business in this city in 1844, and prior thereto. Brokerage business. Under my own name individually. I became a broker in 1842. Prior to 1842 I was in business as a partner of Rogers & Co., in general business, principally in tobacco business.

Q. Did you know the house of J. Lahens & Company, as it existed in this city on and prior to the 25th of May, 1844?

A. I did.

Q. What description of business did you know that house to transact in this city on and prior to the 25th of May, 1844?

A. Principally cotton business with France. I knew them to do some banking business with the South—credits, &c.

Q. Did you or not know them to transact banking business in the city of New-York, other than that with the South?

A. They may have transacted it. I don't know it.

131 Q. You used, in your last answer but one, the word credits. Please state what you mean to express by that word, as to the business which they transacted.

A. By credits, I meant to say that they opened credits to people at the South for the purchase of cotton or other goods, and took their reimbursements upon parties in Europe.

Q. Did they or not also give credits, or letters of credit, in favor of other parties than those at the South?

A. I do not know.

Q. Did they or not buy and sell exchange?

A. Yes; they did, largely.

Q. Did they or not discount paper?

A. They did.

Q. Did they or not, to your knowledge, make advances of money and the credit of the house to parties, for other purposes than the purchase of cotton or other goods?

A. Yes; they did. They advanced money to myself, upon securities; that I know, but I think that was later than 1844.

Q. Did they or not make advances of money and the credit of the house to parties, for other purposes than the purchase of cotton and other goods, prior to 1844?

A. I do not know that they did.

Q. Do you or not know of their having, prior to May, 1844, loaned or advanced their paper to parties, against securities and for commission? (Question withdrawn.)

Q. Do you or not know of their having, prior to 25th May, 1844, loaned or advanced their paper to parties?

A. I don't know it.

Q. Are you acquainted with the signature of the house of J. Lahens & Co.?

A. Yes, sir.

Q. Please look at the endorsements of the name of the house on the Exhibits 35 to 44, both inclusive, and say whether they are the signatures of the house.

132 A. I believe them to be their signature.

Cross-examined by counsel for Louis E. Lahens:

Q. As to the cotton transactions with the house of J. Lahens & Co., spoken of by you, was or not the nature of that business to have the cotton purchased by the correspondents of the house here, and, by virtue of the credit, paid for in bills drawn upon the house here; and was or not the cotton then consigned to the house at Havre, and did not the house here reimburse itself by drawing upon the Havre house?

A. I think so; that was the general way of doing the business.

Q. You were asked whether they bought and sold exchange, and you answered "largely;" did they buy exchange largely, or was their business in exchange principally to sell it?

A. Their sales of exchange were large. The purchases of exchange occasionally and to a small extent.

Q. Were they or not accustomed sometimes to sell their exchange for business paper, or partly for cash and partly for business paper?

A. They were; both.

Q. Do you or not know of their discounting paper to any considerable amount, apart from the paper thus received for the sale of exchange?

A. It is very difficult for me to say whether the paper came from the sale of exchange or anything else. It is a question which I cannot well answer.

Q. In speaking of the house of J. Lahens & Co., I would ask with what member or members of that house you transacted business here?

A. With Louis Emile Lahens.

Q. Were either of the other members of the house here while you did business with them, or at the time of any of the transactions to which you have referred?

A. I have seen one of the brothers Lahens here, and a Mr. Gaudard.

133 Q. Was either of those two gentlemen here at the time of the transactions to which you have referred?

A. I cannot recollect the time they were here. I am very poor at the recollection of dates.

Q. Did you have any of the business transactions, to which you have referred, with Mr. Gaudard or Mr. Louis Emile Lahens's brother?

A. No, sir.

VICTOR DE LAUNAY, sworn for the plaintiffs: I was in business in this city prior to May, 1844, principally in the exportation business, under the firm of De Launay & Co. I knew the house of J. Lahens & Co., in the city of New York, prior to May, 1844.

Q. Please to state what description of business you know to have been transacted by that house, in this city, prior to May, 1844?

A. Their principal business was the exportation of the produce of this country to France.

Q. You say that was their principal business; what, if any, other description of business did you know them to transact prior to May 25th, 1844?

A. They made advances on produce here, and opened credits to their friends in the South for obtaining consignments either to New York or to their house in France.

Q. Did they or not issue credits to be used elsewhere than in the South?

A. Not to my knowledge.

Q. Did they or not buy and sell exchange?

A. They were large sellers of exchange, but not generally buyers—in fact, only occasionally.

Q. Did they or not discount paper?

A. I believe not. Not to my knowledge.

Q. Did they or not make loans of their funds and credit, upon any and what considerations, so far as you know what such considerations were?

A. They loaned their money very often. As regards the securities or considerations, I know nothing.

Q. Did you know Alexander Caselli prior to May 25th, 1844?

134 A. Yes, sir.

Q. Did you or not know him to be a shipper of cotton to the house of J. Lahens & Co., of Havre?

A. Not of my own knowledge.

Q. Did you ever learn from Louis Emile Lahens whether such was the fact or not?

A. I never did.

Q. In answer to a question as to whether you knew of J. Lahens & Company having loaned their credit upon any, and what considerations, prior to May, 1844, you stated that by the word credit, as used in your answer, you meant their signature. Please explain as to any knowledge which you have of such loans of credit that would not be embraced by that definition of the word.

A. In the natural course of their business they would open a credit in the South, to buy cotton, for example.

Q. Did you or not know of their making advances upon merchandise consigned for sale, either to the house in Havre or the house in New York, in their paper, instead of in money?

A. I don't know. Not to my knowledge.

Q. Did they or not accept bills drawn upon time, after date or sight, as advances upon consignments made or promised?

(Defendants' counsel object to the question as irrelevant and leading. Objections allowed. Plaintiffs' counsel excepts.)

By Mr. O'Conor:

Q. Are the endorsements "J. Lahens & Co.," on the Exhibits Nos. 35 to 44, both inclusive, in the handwriting of Louis Emile Lahens?

A. Yes, sir.

William C. Pickersgill recalled for plaintiffs:

135 Please to look at the four bills of exchange now shown you and marked Exhibits Nos. 46, 47, 48, and 49, and say from whom, and when, and under what circumstances you received them?

A. I received them from Mr. Caselli; they were drawn by him against a general amount of probable profits on his cotton. I received them on the 27th December, 1843.

Q. Did you pay Mr. Caselli any and what amount of money for those bills, and on or prior to what date?

A. I had loaned him $30,000 before, on account of his balances, and I paid him $18,444 44 on that day, 27th December, 1843. These two sums were the proceeds, or amount of those four bills, at the current rate of exchange.

Q. Against what invoices and their proceeds, if any, were those bills drawn?

A. They were not taken against any particular invoices, but against the general balance that might be in the hands of Fielden, Brothers & Co. from the sales of cotton and other produce.

Q. Do you mean that it was against a money balance only that might be in their hands at the time of drawing, or including also future proceeds of property then on hand?

A. They would be drawn against both, on general account sales rendered and to be rendered, or made or to be made—the whole thing.

Q. Do those four bills appear anywhere; if so, where, in the account current J., annexed to the commission to Liverpool?

(Objected to. Commission itself shows. Objection overruled. Mr. Van Wagenen excepts.)

A. They appear to the debit of Caselli in that account J., under date of 13th Jan'y, 1844, (on left-hand side,) which was date of their acceptance, and of 16th March, 1844, (on the right-hand side,) which was date of their payment.

Q. Have you examined the debit sides of the account current A., annexed to the commission executed in Liverpool in this cause, and the continuation of that account, ending with the account current J., an-

nexed to the same commission, and are the statements of advances
136 or payments to Caselli, and for his account therein contained, correct, or how otherwise?

(Mr. Van Wagenen objects, on ground that the account was made up at Liverpool, and the testimony obtained there is in the commission, and that no inquiry can be made to witness as to that account, though he might be asked as to separate or single transactions; if admissible, these questions can't be asked in gross. Objection overruled. Mr. Van Wagenen excepts.)

A. I have examined it, and find that the amounts debited to Mr. Caselli agree with the advances we made to him here, changing dollars into sterling.

Q. Do you recollect whether the Virginia bonds or notes of Mr. Osbourne for the $15,000, by their terms, bore interest or not?

A. I do not.

Mr. Van Wagenen offers, (by consent of Mr. Larocque,) on behalf of Louis Emile Lahens, the following letters:

Fielden, Bros. & Co. to Caselli, dated 3d February, 1844. Marked Exhibit No. 50. (Received here 20th February, 1844.) Read.

LIVERPOOL, *3d February*, 1844.

P. Hibernia.

ALEX. CASELLI, Esq., *New York:*

DEAR SIR: We had this pleasure on the 20th ult., and have since received your favors of the 8th, 9th, and 12th ult., the contents of which have been attentively perused. It must be gratifying to you to find your opinions of the crop of United States cotton in the course of confirmation, and that your predictions regarding prices have displayed much foresight.

We regret to observe that you appear to think our partner at New York had not met your views in a liberal spirit; it certainly has always been our wish that our friends should not have cause to complain of us on that point.

137 At the commencement of the season we had suggested prompt action in your Southern markets, provided that the crop was likely to be materially short, and we should have been glad to have heard that he had seconded bold operations then; but at a later period, and after a material advance had occurred, he perhaps would have been justified in acting cautiously, on account of the uncertainty as to the course of this market, so dependent on various circumstances.

The rapid advance which has taken place here is not so much to be ascribed to the shortness of your crop as to the redundance of unemployed capital, which has been afforded to speculators to a large extent, and enabled them to operate so extensively as to influence prices. Spinners have by no means seconded their movements; their purchases, even during the past week, when so much business was done, amounted to only 25,376 bales, and this is not only a convincing proof that their trade is unprofitable at the present prices of cotton, but also that they will, to their utmost, resist the efforts of speculators to raise the value of the article. You will observe that the stock in this port is still large.

Whenever our stock begins to increase we shall have reason to apprehend a reaction in prices; and at a more advanced period of the season, we think it probable, especially if the appearances of the ensuing crop should be favorable, that large sums will be lost in the article.

We have now the pleasure to transmit herein account sales:

341	bales	cotton,	p. Oceanus, ...	pro'ds to	£1,887	1	3	cash,	27	April.
461	"	"	p. Rob Roy,...	"	2,288	10	8	"	17	Mar.
500	"	"	p. U. Kingdom,	"	2,555	17	7	"	31	"
102	"	"	p. Conqueror, .	"	526	2	1	"	1	May.
615	"	"	p. J. Caskee,..	"	3,087	10	8	"	25	Mar.
837	"	"	p. Jane, ...	"	4,140	15	3	"	24	Feb'y.

You have also herein landing certificates,..... 30 bales.
And 30 "
Texas cotton, p. Chester,..... 78 "

In reference to the observations of your friend, respecting the
138 valuation of the tobacco p. Washington, our broker declares that the valuations were correct, and that they have been unattainable, except for the few packages advised.

We enclose an abstract of your account current with us, and we append to it a rough estimate of the parcels of cotton sold, but of which ac. sales are not yet drawn out, and also of the parcels recently arrived. You have also, herewith, particulars of the sales of your cotton, made since we last addressed you.

And remain, very resp., yours.

FIELDEN, BROTHERS & CO.

Your shipments from New York appear to have been very costly; but we flatter ourselves that the prices at which it has been invoiced were the value at the time of shipment, and that the cotton had previously been bought at lower prices; for instance, on the 29 Jan'y, your parcel p. Siddons was valued at $5\frac{3}{8}$ @ 6*d.* p. lb.

1844.

Jan'y 22,	H	116 bales cotton, p.	"Rappahannock,"	a 5 3-16	
24,	L I	20 bales cotton, p.	"Rochester,"	a 5 15-15	
25,	L	103	do.	" "Hottinguer,"	a 5⅛
"	C	50	do.	" "Luconia,"	a 5¼
"	F 37 / M J 21 / S V 30 / O 10	98	do.	" "Rochester,"	a 6
26,	G G	35	do.	" "Sam'l Hicks,"	a 5⅜
"	R L Walton	110	do.	" "Rappahannock,"	a 5¼
27,	Jones	40	do.	" " do.	a 5¼
"	S	91	do.	" do.	a 5⅛
"	M M	72	do.	" "Hottinguer,"	a 5¼
"	O O	22	do.	" do.	a 5¼
"	B	30	do.	" "Republic,"	a 5¼
"	S	40	do.	" do.	a 5⅛
"	G H	15	do.	" "Rochester,"	a 5¼
29,	80	21	do.	" "Georgiana,"	a 5¼
"	X	21	do.	" "Virginian,"	a 5⅞
"	Folk	110	do.	" "Republic,"	a 5⅜
"	Jones	48	do.	" "Rappahannock,"	a 5⅜

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"	J / L I	216 / 176	do.	" "Georgiana,"	a 5⅞
"	L	191	do.	" "Monument,"	a 5⅞
"	D	311	do.	" "Virginia,"	a 5⅞
Jan'y 29,	C	115 bales cotton, p.		"Luconia,"	a 5⅞
30,	I	24	do.	" "Republic,"	a 5⅜
"	W C S / J H B. 30 / T M Hamilton 56 / E W 15 / W 1	110	do.	" "Rappahannock,"	a 5⅜
31,	N H F	72	do.	" "Republic,"	a 6
"	M	185	do.	" "Luconia,"	a 6
Feb'y 1,	L	13	do.	" "Hottinguer,"	a 5⅜
"	GN N	100	do.	"Sobieski,"	a 6
"	EI N	82	do.	" do.	a 6
"	N G M	87	do.	" do.	a 6

"		75	do.	" do.	
"		129	do.	" do.	..... a 5⅞
"		22	do.	" do.	
"	C E	72	do.	" "Europe," ..... a 6	
"	G G	68	do.	" "Independence," . a 5½	
"	C L B	42	do.	" "Rappahannock," a 5¾	
3,	S V 22				
"					
"		45	do.	" "Virginia," ..... a 6	
"					
"	L	33	do.	" "Hottinguer,".... a 5	9-16
"	E Richardson	100	do.	" "Rappahannock," a 6	
"		153	do.	" "Luconia,"	

140 Same to same, dated 4th March, 1844, marked Exhibit No. 51, received 25th March, 1844, read:

Per Caledonia. LIVERPOOL, *4th March*, 1844.

ALEX. CASELLI, Esq., *New York:*

DEAR SIR: We enclose press copies of our respects of the 16th and 17th ults., and have now to acknowledge the receipt of your several favors of the 19th and 30th January and 1st and 8th February, the contents of which have had our careful perusal.

We much regret that you have felt it necessary to direct a portion of your consignments to other parties here, as we frankly admit that your business has been a most valuable one, and that we have felt desirous of preserving a correspondent whom we have just reason to appreciate and esteem. We shall, however, indulge the hope that we shall continue to participate in the shipment of produce which you make to this port, and we beg to assure you it will ever give us pleasure to receive them, and to do our utmost for your interest.

Since we last addressed you, we have thought it for your benefit to persevere in realizing your property under our charge, being impressed with the belief that the article is not susceptible of much, if any, further enhancement, and that ere long, when supplies come forward more freely, as they assuredly will, that there is a greater probability of a decline than a rise in prices of cotton. Particulars of the sales effected for you are appended. We enclose herein sundry account sales of shipments to our address, as follows:

1,601	bales	per	Harriet & Jessee,	pro.	£8,945	16	9	cash,	15	April.
769	"		Venice,	"	3,976	2	0	"	5	Feb'y.
431	"		Brazil,	"	2,173	14	10	"	23	Mar.
409	"		Rochester,	"	5,300	12	10	"	13	April.
50	"		"	"	439	4	9	"	2	May.
551	"		Georgiana,	"	3,399	15	11	"	29	April.
40	"		Virginia,	"	499	10	2	"	15	May.
495	"		Sobieski,	"	3,943	2	8	"	14	"
350	"		North Star,	"	2,373	7	0	"	10	"
141 1,179	"		Luconia,	"	8,061	13	6	"	20	"
542	"		Monument,	"	3,791	17	6	"	19	"
335	"		Virginia,	"	2,210	11	4	"	12	"
138	"		Chester,	"	1,024	6	5	"	9	"
168	"		Europe,	"	1,552	18	4	"	9	"
382	"		Marathon,	"	2,630	7	9	"	25	"

Since writing the foregoing, we are in possession of your favors of the 14th and 18th ults., and note your observations respecting your crop, and the various opinions entertained of it by interested parties, whilst at the same time we must give you credit for our earlier discernment into the facts than your neighbors. As we have said before, we would have been glad if you had acted in the Southern markets at an earlier period, upon your own judgment, and to a greater extent.

When prices had advanced materially, of course prudence would dictate more moderate operations, as, though your crop is very deficient, compared with the previous one, still it should not be forgotten that that previous one was excessively large, and left us with a large surplus at the beginning of the year, and that excess has been the enemy we have had to combat. At this moment, you will observe by the prices current herewith, that our stock is as large as on the 1st January, and from the advices we receive, it is probable that the supply will, notwithstanding the lightness of the exports from the United States, keep

pace with the consumption until supplies come forward in larger quantities, when we may expect an increasing stock, and then, if trade be not more prosperous than it is at present, we may fear a decline in prices.

It is our opinion, therefore, that you should enter cautiously into further operations, until we are better able to judge of what the future currency of the article is likely to be. We send herewith a statement of your account, giving you credit for the parcels of cotton still undisposed of, (at the landing valuation,) and that exhibits a balance at your credit of about £15,000. A copy of this statement we send to W. C. Pickersgill & Co., to show them what further sum they may ad-
142 vance to you. We purpose transmitting by every succeeding steamer a statement, so that if W. C. P. & Co. should not grant you adequate advances, they will soon afterwards be put in a condition to give you all that you can require upon your shipments to our address.

The agents of the Iron Queen are indisposed to send her to Texas for the mere chance of what she might get on freight.

We most sincerely hope, when we address you by the succeeding steamer, that we shall be able to report an improvement in the trade of Manchester, as any future enhancement of the article here must mainly depend upon a rally there.

Very truly yours,

FIELDEN, BROTHERS & CO.

Sales of cotton effected for account of A. Caselli, Esq.:

1844.							
Feb. 19.	OV		24	bales cotton, p.	"Rappahannock,"	*a* 6⅛	p. lb
"	D	71	135	do.	"New York,"	*a* 5⅞	"
"	JD	64					
"	F		9	do.	"Chester,"	*a* 5¾	"
	A		36	do.	"Republic,"	*a* 5⅝	"
	FL		12	do.	"New York,"	*a* 5⅝	"
"	MF		50	do.	"Virginia,"	*a* 6¼	"
	H		27	do.	"Rappahannock,"	*a* 5¾	"
"	G M		51	do.	"Virginia,"	*a* 6	"
	N						
"	MO		16	do.	"Ohio,"		
"	J. Martin,		68	do.	"Liverpool,"	*a* 6 1-16	"
"	12		88	do.	do.		
20.	5		30	do.	"New York,"	*a* 6	"
"	JT		20	do.	"Rappahannock,"	*a* 6¼	"
"	C	22	43	do.	"Liverpool,"	*a* 5⅝	"
	P	21					
"	CM		24	do.	"Ohio,"	*a* 6⅛	"
21.	JB		20	do.	"New York,"	*a* 6	"
"	F	12	36	do.	"Republic,"	*a* 5⅝	"
	P	24					

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Feb.	21.		20	26 bales cotton, p.		"New York,"	*a* 5½	p. lb.
"		P	6					
"				62	do.	"Rappahannock,"	*a* 6	"
"		P	22	38	do.	"Liverpool,"	*a* 5⅝	"
"		WH	16					
"		FR		20	do.	do.	*a* 5¾	"
"		R		21	do.	"Rappahannock,"	*a* 5⅞	"
"		WD		50	do.	"Liverpool,"	*a* 5¾	"
"		WH	4	8	do.	"Republic,"	*a* 6⅛	"
	22.	H	4					
"		LP		32	do.	"Rappahannock,"	*a* 5½	"
"		A		36	do.	"Columbus,"	*a* 5 15-16	
"		W. F. Haskett,		25	do.	"Liverpool,"	*a* 6 1-16	
"			12	37	do.	"Virginia,"	*a* 6⅛	"
"		ME	25					
"		MJM		7	do.	do.	*a* 5¼	"
"		CE		16	do.	"Liverpool,"		
"		WB	19	22	do.	"New York,"	*a* 5⅜	"
"			3					
"			12	19	do.	do.	*a* 5¾	"
"		3	7					
	23.			102	do.	"Columbus,"	*a* 5¼	"
"		B		32	do.	do.	*a* 5⅜	"
"		W. Martin,		126	do.	"New York,"		
"		T	7					
"		P	8	21	do.	"Independence,"	*a* 5¾	"
"		LW	6					
"		LL	21					
"		BW	24					
"		ETW	22	107	do.	"Rappahannock,"	*a* 6¼	"
"		C/E	40					
"		H&I	9	25	do.	"Columbus."		
"		A. Hotty	16					
"		J	11	22	do.	do.	*a* 5¾	"
"			11					
"		J		26	do.	"Hottinguer,"	*a* 15-16	

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Feb.	24.	TD	15					
			5					
		JLB	4	45	do.	"Independence,"	*a* 5⅝	p. lb.
		HS	14					
			5					
"		WW	25					
		JC	35					
		TW	8					
			5	80	do.	do.	*a* 5¾	"
		H	7					

Feb.	24.	JWR	58	bales cotton, p.	"Independence,"	*a* 5 9-16	p. lb.
	26.	Exchange	30	do.	"Columbus,"	*a* 5⅝	"
	27.	M	20	do.	"Rappahannock,"	*a* 6	"
"		EV	35	do.	do.		
"		L	26	do.	do.	*a* 5⅝	"
"		HW	14	do.	"Queen of the West,"	*a* 6	"
"		R	45	do.	"Liverpool,"	*a* 5⅝	"
"		T Crane	49	do.	"Rappahannock,"		
"		DJ	73	do.	"Independence,"		
"		Charleston	109	do.	"Independence,"	*a* 5⅞	"
"		Q 19 / SCO 19	38	do.	"Rappahannock,"		
	28.	No mark	77	do.	"Queen of the West,"	*a* 5⅝	"
"		LV	76	do.	do.	*a* 5⅞	"
"			50	do.	do.		
"		FM	50	do.	do.	*a* 5⅝	"
"		D 30 / D 7	37	do.	do.		
"		NMP	57	do.	do.	*a* 5⅞	"
"		N LT	30	do.	"Ohio,"	*a* 6⅛	"
"		21	45	do.	"Siddons,"	*a* 6	"
"		G	117	do.	"Liverpool,"		
"		Charleston	80	do.	"Rappahannock,"		
"		V	25	do.	"Queen of the West,"	*a* 5⅞	"
"		SP	23	do.	do.	*a* 5⅝	"
"		EM	61	do.	do.	*a* 5⅝	"
"		BV	34				
"		C	30	do.	do.	*a* 5⅝	"

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"		JV	37	do.	do.	*a* 6	"
"		W. Goffrey,	29	do.	"Liverpool,"	*a* 6	"
	29.	R	20	do.	"Rappahannock,"	*a* 5⅝	"
"		Charleston,	95	do.	do.	*a* 6	"
"		EC 53 / EN 21	74	do.	"Liverpool,"	*a* 5⅝	"
"		PFW 17 / WW 24	41	do.	"Rappahannock,"	*a* 5⅞	"
"		R	21	do.	do.	*a* 6⅛	"
Mar.	1.	WH	30	do.	Independence,"	*a* 5⅝	"
		F 23 / JN 27	50	do.	do.	*a* 5 13-16	"
"		D	32	do.	"Liverpool,"	*a* 6	"
	2.	CST	35	do.	"Queen of the West,"	*a* 5⅝	"
"		G	24	do.	"Columbus,"		

Mar. 2.	NE	72	bales cotton, p.	"Sam'l Hicks,"	*a* 5 15-16	p. lb.
" 4.	Charleston,	65	do.	"Independence,"	*a* 6	"
"	JJ Howard,	40	do.	"Liverpool,"		
	CH	24	do.	"Ohio,"	*a* 5 13-16	"
"	R	26	do.	"Rappahannock,"	*a* 6⅜	"

Same to same, dated 13th March, 1844. Marked Exhibit No. 52. Received 14th April, 1844. Read.

P. Sheridan. LIVERPOOL, 13*th March*, 1844.

ALEX. CASELLI, Esq., *New York:*

DEAR SIR: We enclose a press copy of our respects of the 6th inst. Since then we have effected sales of a further portion of your cotton as p. particulars annexed. Enclosed is a circular of the 8th inst. The sales of the 9th to this date, inclusive, amount to 21,000 bales of all kinds, of which speculators have taken 6,500 bales. To-day the demand from the trade has been more active than for many days previously, and our market has been firm at the quotations of the 8th inst. The imports recently, on account of adverse winds, have been very light.

Resp. yours,

FIELDEN, BROTHERS & CO.

146 *Sales of cotton for account of A. Caselli, Esq.*

1844.						
March 6.	VE 7 / A R Arnold 22	29	bales cotton,	p. Liverpool,	*a* 5⅜	p. lb.
"	R	3	do.	"Rappahannock,		
"	R 4 / 2					
	G 3 / A / DK 9	16	do.	" do.	*a* 5¼	"
7.	MR 22 / G 9	31	do.	"Ohio,	*a* 5 9-16	"
"	YGJ 16 / A Goyne, 10	26	do.	" do.	*a* 6 1-16	"
"	7	23	do.	"Siddons,	*a* 5⅛	"
"	Watkins,	14	do.	" do.	*a* 6	"
"	2	164	do.	" do.	*a* 5⅛	"
"	Dougbell,	18	do.	"Liverpool,		
8.	GL	48	do.	"Joseph Cunard,	*a* 6	"
"	TCE	25	do.	"Rappahannock,	*a* 6¼	"
"	JOSM 15 / P 11	26		do. " do.		
"	EL	100	do.	"Georgiana,	*a* 5⅞	"
"	A	76	do	"Liverpool,		
	R	9	do	"Ohio,		
"	AB	4	do	"Rappahannock,	6¼	

March 11.	P CO	8		bales cotton,	p. Ohio,	5⅞ p. lb.
"	R	42		do.	" Liverpool,	5¾
"	PHK	102		do.	" do.	5 15-16
"	AP	102		do.	" Rappahannock,	6
"	S&C	4		do.	" Independence,	5¼
12.	Y	10		do.	" Ohio,	5⅞
13.	#	20	50	do.	" do.	
"	H	30				
"	AB	24		do.	" do.	5¾
"	V	41		do.	" do.	6
(147)	WA	37				
"	S 12					
"	TJG 10	42		do.	" Siddons,	5¾
	GM 5					
	F 3					
	BI 12					
"	N	61		do.	" Ohio,	6
	UN					
"	H	161		do.	" Rappahannock,	6
"	4 120 3	53-173		do.	" Siddons,	
"	EL	26		do.	" Georgiana,	5⅞
"	J. Lewis,	70		do.	" Siddons,	
"	EB	33		do.	" Independence,	

Mr. Van Wagenen, for the defendant, Louis E. Lahens, moves for a dismissal of the complaint, and for a nonsuit, on the following grounds:

1st. That if a recovery be not had against *all* the partners on a partnership contract, the suit must fail as to all; and that on the evidence in this case there is no evidence against the defendants, other than Louis Emile Lahens.

2d. That Mr. Pickersgill took the notes with notice of the condition, not in the usual course of business, and parted with no value for them at the time.

3d. That the suit is prematurely brought, the accounts not having been made up until after October, 1844, and the last of the property not sold until 1846.

4th. That Caselli's statement of the transaction is supported by the weight of all the testimony, circumstances, &c., and Mr. Pickersgill's statement of it, contradicted by them.

5th. That Mr. Lahens is not to be the sufferer from any misunderstanding between Caselli and Pickersgill as to the terms of their agreement.

148 Mr. O'Conor, for the other defendants, except Louis Emile Lahens, argues in favor of granting the motion for nonsuit, as to all defendants, and makes such a motion on behalf of his own clients on the following points:

I. The defence of the absent brothers Lahens is based on a familiar rule: "Each of the partners is the agent of the partnership as to all matters within the scope of the partnership business; and can bind the firm by making, endorsing, and accepting bills and notes in such business; but he has no more authority than a mere stranger to execute such paper in his own business, or for the accommodation of others;" and in such cases as against the firm, the instrument "is void in the hands of any party having knowledge of the consideration for which it is given."

"The cases in this State, by which this doctrine is illustrated and established, are numerous and uniform."

II. The form of the security taken by the plaintiffs was full and express notice to the plaintiffs that the signature of Lahens & Co. was placed thereon by some member of the firm, by way of and as a guaranty of the obligation to pay, entered into by Caselli.

1. Endorsing as surety for another is not a legitimate and regular branch of banking business.

2. The attempt to connect the firm of Lahens & Co. with the consideration moving between Caselli and Pickersgill, by force of any inferences deducible from the fact that some of the business notes given up to Caselli by Pickersgill bear the endorsement of Lahens & Co., is not consistent with any legal view of the evidence, and is well refuted by Laverty and Gantley vs. Burr et al., 1 Wend.. 529.

III. It is the duty of the referees to dismiss the complaint against these defendants.

149 1861, Nov. 8th.—It was decided by Messrs. Betts and Emmet, two of the referees, that the plaintiffs be nonsuited generally as to all defendants. Mr. Goddard, the other referee, dissented as to the nonsuit including Louis E. Lahens.

The decision of the majority was made upon the grounds stated in their report, and the plaintiffs' counsel duly excepted to the decision as to the defendants Pierre F. and Edouard E. Lahens, and also duly excepted to the decision as to the defendant Louis E. Lahens.

Plaintiffs' counsel proposes to examine defendant Louis Emile Lahens, as to the endorsements being given with or without the knowledge or assent of the other defendants.

(Mr. Van Wagenen objects.)

1st. That it is too late, Louis Emile Lahens having been already examined and cross-examined.

2d. That it is not within the issue to prove that the contract was not a joint one.

(Mr. O'Conor also objects.)

Messrs. Goddard and Emmet, two of the referees, decide that plaintiffs' counsel has the right to examine Louis Emile Lahens to ascertain whether the liability was joint or several.

Mr. Betts concurs as to the right to examine him, but not to prove by him anything not within the issue as made by the pleadings.

The plaintiffs' counsel states that he has subpœnaed Mr. L. E. Lahens to produce the articles of partnership of defendants, and calls him.

(Mr. Van Wagenen objects, on the following grounds :)

1st. That L. E. Lahens cannot now be recalled or introduced
150 as a witness in accordance with rules, and without a statement in advance by the plaintiffs' counsel on his honor of what he expects to prove by him, and that his testimony should be in support of the issue in the cause. But Mr. Lahens has been already examined as a witness, and plaintiffs' counsel should then have exhausted his inquiries.

2d. That the articles of partnership cannot now be offered in evidence by the plaintiffs' counsel for the same reason.

3d. That the referees are bound to see that no irrelevant testimony be admitted, and to prevent its admission when properly objected to.

(Mr. O'Conor concurs with Mr. Van Wagenen in his objections.)

Messrs. Emmet and Betts (Goddard dissenting) decide that it is proper for the plaintiffs' counsel to state what they expect or intend to prove by the witness.

The plaintiffs' counsel states, "we intend to prove what was the authority conferred on Louis Emile Lahens by his copartners, as a member of the firm of J. Lahens & Co., we ourselves not knowing what that authority was."

Messrs. Betts and Emmet decide that the answer is insufficient; that it states no intention or expectation of proving any distinct fact or condition from which the referees can determine whether the proposed evidence is relevant to the issue or otherwise, and that it is indefinite, and accordingly exclude the offered evidence.

(Mr. Goddard dissents.)

(The plaintiffs' counsel excepts to this decision of the majority of the referees, and stated that he had no further evidence to offer.)

In the course of the trial, "evidence was given on both sides
151 tending to show the state of the accounts between Fielden, Brothers & Co. and Alexander Caselli, from the 1st of March, 1844, to the time of the commencement of this action, but not being pertinent to the points on which the cause was decided by the referees, it is omitted."

The plaintiffs' counsel requested the referees to find and decide upon what consideration the notes in question, bearing the endorsements of the said J. Lahens & Company, were delivered by the said Alexander Caselli; and also requested them to find and decide that the same were so delivered upon a good and sufficient consideration moving from the said W. C. Pickersgill & Co. to the said Alexander Caselli.

The majority of the referees thereupon made the following report, which was dissented from by Mr. Goddard, the referee who did not sign it, upon the points as to which his dissent is expressed in the opinion written by him:

New York superior court.

THOMAS FIELDEN, DANIEL CAMPBELL, AND William C. Pickersgill, survivors, &c.,
against
PIERRE FRANCOIS LAHENS, LOUIS EMILE Lahens, and Edouard Ernest Lahens, survivors, &c.

This action, and the issues therein, having, by orders of this court heretofore made, been referred to Robert Emmet, George C. Goddard, and William Betts, esquires, to hear and determine the same, and the said referees having been attended by the respective counsel for the parties above named, and having all heard, examined, and consid-
152 ered the proofs before them, and the arguments of the said counsel, we, the undersigned, referees as aforesaid, do hereby report the following as the facts found by us, that is to say:

First. That at the time of the making and endorsing of the promissory notes in the declaration in this action set forth, Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and

William C. Pickersgill were copartners in trade, under the respective firms of Fielden, Brothers & Co., of the city of Liverpool, in England, and of W. C. Pickersgill & Co., at the city of New York. That the said Joshua Fielden, John Fielden, and James Fielden have since departed this life, and that the said Thomas Fielden, Daniel Campbell, and William C. Pickersgill have survived them. Also, that at the time of the making and endorsing of the said promissory notes, Pierre Francois Lahens, Edouard Ernest Lahens, Edouard Gaudard, and Louis Emile Lahens were copartners in mercantile business at Havre, in France, and at the city of New York, respectively, under the firm of J. Lahens & Co.

That the said Louis Emile Lahens was the only one of the said copartners then residing in the city of New York or in the United States. That the said Edouard Gaudard has since departed this life, and that the defendants in this action have survived him.

Second. That the endorsements of the name of J. Lahens & Co. upon the said promissory notes were made and executed in the city of New York, by the defendant, Louis Emile Lahens, one of the members of the said firm, and delivered by him to Alexander Caselli, the maker of the said notes in the said city, for the accommodation of the said Alexander Caselli, and that no consideration was received by the said J. Lahens & Co. for such endorsements.

Third. That the said notes, so endorsed, were delivered by the
153 said Alexander Caselli, the maker thereof, to the said firm of W. C. Pickersgill & Co., at the said city of New York.

Fourth. That the said W. C. Pickersgill & Co., by the fact of such possession and delivery of the said notes to them by the maker thereof, after the same had been so endorsed with the name of the said J. Lahens & Co., had notice that the said J. Lahens & Co. had received no value therefor, and that the said endorsements were made for the benefit and accommodation of the maker of the said notes.

Fifth. That the plaintiffs have failed to prove a joint liability of the defendants.

And we do further report, that upon the said facts we find, as a conclusion of law, that the plaintiffs, having so failed to prove a joint liability of all the defendants, cannot recover in this action against the said defendants, or against any or either of them.

And we do, therefore, decide and determine, that all the defendants are entitled to judgment of nonsuit against the plaintiffs, and for their costs.

New York, December 12th, 1860.

R. EMMET.
WILLIAM BETTS.

The plaintiffs duly excepted to the report, as follows:

First: To the finding that the said notes, so endorsed, were delivered by the said Alexander Caselli, the maker thereof, to the said firm of W. C. Pickersgill & Co.

Second. To the finding that the said W. C. Pickersgill & Co., by the fact of such possession and delivery of the said notes to them by the maker thereof, after the same had been so endorsed with the name of the said J. Lahens & Co., had notice that the said J. Lahens & Co. had received no value therefor, and that the said endorsements were made for the benefit and accommodation of the maker of the said notes.

154 Third. To the finding that the plaintiffs have failed to prove a joint liability of the defendants.

Fourth. To the finding, as a conclusion of law, that the plaintiffs, hav-

ing so failed to prove a joint liability of all the defendants, cannot recover against the said defendants, or against any or either of them.

Fifth. To the decision and determination that all the defendants are entitled to judgment of nonsuit against the plaintiffs, and for their costs.

Sixth. To the omission to decide, as a conclusion of law from the facts found, that the plaintiffs are entitled to judgment against the defendant, Louis Emile Lahens.

Seventh. To the omission to find or decide whether the notes so endorsed were delivered by the said Caselli to the said W. C. Pickersgill & Co. upon any, and if upon any, on what consideration they were so delivered.

Eighth. To the omission to find or decide, as requested by the plaintiffs' counsel, that they were so delivered, upon good and sufficient consideration, moving from the said W. C. Pickersgill & Co. to the said Caselli.

New York superior court.

THOMAS FIELDEN AND OTHERS, survivors, &c., appellants,
against
PIERRE FRANCOIS LAHENS AND OTHERS, survivors, &c., respondents.

This action was commenced in October, 1844.

1844, Oct. 21, capias returned served, and appearance of defendants entered.

155 1844, Nov. 20, plea served.

The names of the original parties in full were as follows, viz.:

Plaintiffs—Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, William C. Pickersgill.

Defendants—Pierre Francois Lahens, Augustin Edouard Gaudard, Louis Emile Lahens, Edouard Ernest Lahens.

Since the commencement of the suit three of the plaintiffs, viz., Joshua Fielden, John Fielden, and James Fielden, and one of the defendants, viz., Augustin Edouard Gaudard, have died.

No other change has taken place in the parties.

156 Superior court of the city of New York.

THOMAS FIELDEN AND OTHERS, APPELLANTS,
agst.
LOUIS EMILE LAHENS AND OTHERS, RESPONDENTS.

GENT'N: Please take notice that I appear as attorney for the respondent, Louis Emile Lahens, on the appeal in the above action, and that for your convenience, my office, for service of papers in said action, will be that of Messrs. E. Lahens & Co., 60 Wall street, New York City.

Dated 31st December, 1861.

WM W. VAN WAGENEN,
Att'y for Louis Emile Lahens, Respondent, 60 Wall street.

LAROCQUES & BARLOW, Esq'rs.
Att'ys for App'ts.

157 At a general term of the superior court of the city of New York, held at the City Hall of the city of New York, on the 28th day of June, 1862:

Present, Hon. Joseph S. Bosworth, chief justice; James Monerief, A. L. Robertson, J. M. Barbour, James W. White, and C. L. Monell, justices.

THOMAS FIELDEN AND OTHERS, APPELLANTS,
against
P. F. LAHENS AND OTHERS, RESPONDENTS.

The appellants above named, having appealed to the general term of this court from the judgment entered in this action upon the report of the referees herein, on the 22d day of October, 1861, awarding judgment of nonsuit in favor of the above-named respondents, against the above-named appellants, and further awarding to the said respondents their costs and allowances in said action, as follows, viz, to the respondents, Pierre F. Lahens and Edouard E. Lahens, the sum of one thousand one hundred dollars, for their costs and allowance, and to the respondent, Louis E. Lahens, the sum of fifty-one hundred and twenty-nine dollars and eighty-seven cents, for his costs and allowance, and from the whole of said judgment.

After hearing Mr. Larocque and Mr. Lord, for the appellants, Mr. O'Conor, for the respondents, Pierre Francois Lahens and Edouard Ernest Lahens, and Mr. Noyes, for the respondent, Louis Emile Lahens, and due deliberation being thereupon had:

Ordered, That the judgment in this action be, and the same is
158 hereby, affirmed in all things, with costs to the respondents, Pierre Francois Lahens and Edouard Ernest Lahens, and also to the respondent, Louis Emile Lahens.

Enter.

C. L. M.

Superior court of the city of New York.

THOMAS FIELDEN, DANIEL CAMPBELL, AND William C. Pickersgill, survivors of Joshua Fielden, James Fielden, and John Fielden, appellants,
against
PIERRE FRANCOIS LAHENS, EDOUARD ERNEST Lahens, and Louis Emile Lahens, survivors of Augustin Edouard Gaudard, respondents.

Judgment, July 10th, 1862.

The above-named appellants having appealed to the general term of this court from the judgment entered in this action, upon the report of the referees herein, on the 22d day of October, 1861, awarding judgment of nonsuit in favor of the above-named respondents, against the above-named appellants, and further awarding to the said respondents their costs and allowances in said action, as follows, viz, to the respondents, Pierre F. Lahens and Edouard E. Lahens, the sum of one thousand one hundred dollars, for their costs and allowance, and to the respondent, Louis E. Lahens, the sum of fifty-one hundred and twenty-nine dollars and eighty-seven cents, for his costs and allowance; and said ap-
159 peal having been heard and judgment of affirmance thereon, with costs, having been duly ordered:

Now, on motion of T. G. Glover, attorney for the respondents, Pierre F. Lahens and Edouard E. Lahens,

It is hereby ordered and adjudged, that the said judgment be, and the same is hereby, in all things affirmed, and that the respondents, Pierre Francois Lahens and Edouard Ernest Lahens, recover of the

appellants, Thomas Fielden, Daniel Campbell, and William C. Pickersgill, the sum of one hundred and two dollars and fifty-one cents, for their costs and disbursements on said appeal, and that the said respondent, Louis Emile Lahens, recover of said appellants, Thomas Fielden, Daniel Campbell, and William C. Pickersgill, the sum of
for his costs and disbursements on said appeal.

ROB'T D. LIVINGSTON, *Clerk.*

Filed July 10, 1862, 1.05 P. M.

New York superior court.

THOMAS FIELDEN, DANIEL CAMPBELL, AND WILLIAM C. Pickersgill, survivors of Joshua Fielden and others, appellants,
against
PIERRE F. LAHENS, EDOUARD E. LAHENS, AND LOUIS E. Lahens, survivors, &c., respondents.

GENTLEMEN: You will please take notice that Thomas Fielden, Daniel Campbell, and William C. Pickersgill, survivors of Joshua
160 Fielden and others, the plaintiffs and appellants above named, hereby appeal to the court of appeals from the judgment entered herein, on the 10th day of July, 1862, in pursuance of the decision of the general term of this court, affirming, with costs, the judgment entered in the above-entitled action, upon the report of the referees in said action, on the twenty-second day of October, in the year 1861, awarding judgment of nonsuit in favor of the defendants, the respondents above named, against the plaintiffs, the appellants above named, and further awarding to the said defendants their costs and allowances in said action, as follows, that is to say: to the defendants, Pierre F. Lahens and Edouard E. Lahens, the sum of one thousand one hundred dollars, for their costs and allowance, and to the defendant, Louis E. Lahens, the sum of fifty-one hundred and twenty-nine dollars and eighty-seven cents, for his costs and allowance, and from the whole of said judgment of said general term of said superior court.

Dated New York, July 22d, 1862.

Yours, &c.,

LAROCQUES & BARLOW,
Appl'ts Att'ys.

To ROB'T D. LIVINGSTON,
Clerk of the Superior Court
of the City of New York.

T. J. GLOVER,
Attorney for respondents,
P. F. and E. E. Lahens.

To W. W. VAN WAGENEN,
Att'y for resp't, L. E. Lahens.

To F. DOMINICK,
Att'y for def't, L. E. Lahens,
in said action, prior to appeal to
General Term of Superior Court.

Filed July 25, 1862.

REC. 402—6

161 N. Y. superior court.

THOMAS FIELDEN ET AL., APPELLANTS, *ag't* LOUIS EMILE LAHENS ET AL., RESPONDENTS. } General term, May, 1862.

Before Bosworth, Ch. J., Monerief, Robertson, White and Monell, JJ.—T. J. Glover and W. C. Noyes, for respondents.—J. Larocque and D. Lord, for appellants.—Decided June 28, 1862.

By the court—Bosworth, Chief Justice:

An important question presented by this appeal is, whether, in an action on contract commenced before the enactment of the Code, against several persons as partners, the plaintiff can recover against either, without establishing a cause of action against all.

It was settled before the Code, that in such an action, if the evidence disclosed that there were too many or too few plaintiffs, or too many defendants, a nonsuit was inevitable.

The codifiers, in their note to section 230, (now 274,) state the
162 existence of this rule, and the consequences arising from the non-joinder or misjoinder of parties, and that "this section will prevent them hereafter."

Codifier's Report of Feb. 29th, 1848, (p. 194.)

Having proposed this section for the purpose of accomplishing this object, (among others,) and the legislature having enacted it in the form proposed, with this explanation of its design before them, that body must be presumed to have enacted it for the purpose of giving effect to this intent. The language of the section is appropriate to produce the change proposed to be effected by it.

These considerations are sufficient to show that it was never contemplated that section 169 (145) would be construed as sufficient to produce the same result; and that it was not enacted with a view to make such a result possible. The codifiers, after having drafted that section, and appended to it a note explanatory of its design, drew section 274, (230,) and, by a note added to it, state that the latter section was proposed as drawn, to obviate the unjust consequences imputed to the common-law rule as to parties, to which that note refers.

Section 8 of the Code declares, that part 2 of the Code (in which these sections are found) "relates to civil actions commenced in the courts of this State after the 1st day of July, 1848, except when otherwise provided therein."

An act was passed contemporaneously with the Code, (April 12, 1848,) entitled an act to facilitate the determination of existing suits in courts of this State, (Laws of 1848, p. 566.) That act applied to existing suits, sections 145 to 151, inclusive, (now 169 to 176, inclusive,) but did not apply to section 230, (now 274.)

When this act and the Code were amended in 1849, the same condition of things was continued. (Laws of 1849, p. 705.) There can be no pretence that the law has been changed in this respect unless it has been effected by § 459 of the Code, as amended in 1851. It must therefore be conceded that up to 1851 the Code had not only not at-
163 tempted to modify the common-law rule as to parties in suits commenced prior to its enactment, but, on the contrary, it expressly provided that the very section which was enacted to abrogate it as to suits to be commenced subsequently, should not apply to existing suits.

There would seem to be good reason for not applying it to existing suits. The enactment of a law pending a suit, which should deprive a defendant of a perfect defence to the action, and of the costs consequent upon establishing it, and enable a plaintiff to recover damages, and not only absolve him from a liability to pay costs to all the defendants, but confer a right to recover costs from some of them, would be extraordinary legislation. And it was evidently the design that a plaintiff, who had a suit pending at the time the Code took effect, in which, by the settled rules of the common law, he could not recover, although it might be for the reason he had sued too many persons as defendants, should be controlled to the conclusion of the litigation by the rules regulating the right to recover at all, which were in force when his suit was brought.

I do not find that chapter 380 of the Laws of 1848, as amended by chapter 439 of the Laws of 1849, has been repealed.

Section 459 of the Code, as amended in 1851, should be construed in the light of this legislation, and in harmony with the policy and provisions of chapter 380, (Laws of 1848,) and chapter 439, (Laws of 1849,) unless, by the obvious meaning of its terms, it repeals the last-named act. That act is not by any statute, in terms, repealed. And if repealed, it is by force of a construction to be given to section 459 of the Code.

That section, by enacting that "the provisions of this act (the Code) apply to future proceedings in actions or suits heretofore commenced and now pending, * * * where there is an issue of law or fact, or any other question of fact to be tried, to the trial and all subsequent proceedings," merely prescribes the forms to be observed, and does
164 not modify or repeal any rule of law affecting a defendant's liability in the action, or a plaintiff's right to recover in it.

In Rich vs. Husson, 1 Duer Rep., 617, 620, 621, the meaning of the word proceeding, as used in this section, was a matter of consideration and comment, and it was construed as being synonymous with modal. The first subdivision of it requires "the pleadings and all subsequent proceedings" where there has been no pleading, to be in the form prescribed for suits brought under the Code. The second applies the forms of the Code "to the trial and all subsequent proceedings;" and the third, its forms of proceedings "to enforce, vacate, modify or reverse" a judgment or order.

The object of this section, which, by amendment, received its present form nearly three years after the Code took effect, was to prescribe in regard to all steps that might be taken subsequently in existing suits, that they should be in the form provided by the Code. From that time forward, all proceedings then subsequent, whether in suits commenced before or after the Code was passed, were to be the same in form, as if the suits were brought under the Code.

In this view of the law, the referees did not err in holding that the plaintiffs could not recover against either defendant, as they had failed to prove a joint liability of all.

No case has been cited which holds that in an action commenced prior to the Code, against several as joint contractors, the plaintiff can recover against some of them, without so far establishing a right to recover against all, as consists in proof that the contract sued upon is the joint contract of all. In such a case a plaintiff could recover, though one or more of the defendants might establish a defence merely personal, as infancy, or the like. But he was compelled to establish that it was in fact the joint contract of all; and failing to do this, he could not recover against either.

II. The plaintiffs, at the time they received the notes in ques-

165 tion, received them from A. Caselli, the maker, and knew that the endorsements were not given for a partnership debt, or in the partnership business, and that they were written by one of the firm in a matter not relating to the firm's business; but, on the contrary, to accommodate the maker. (Fols. 261, 267.)

Laverty vs. Burr, 1 Wend. R., 529.
Stall vs. Catskill Bank, 18 Id., 478.
Sabin vs. Foot, 19 J. Rep., 156.
Boyd vs. Plum, 7 Wend. R., 309.
Joyce vs. Williams, 14 Id., 141.
Wilson vs. Williams, 14 Id., 158.

If the referees had found the fact which the appellants' counsel insist they might have found upon the evidence, viz: that the business paper delivered by Pickersgill to Caselli, on the 23d of May, was entrusted to the latter under an agreement, to the effect that Pickersgill was to receive in exchange for it other good business paper, to the amount of 27,500 dollars, and J. Lahens & Co.'s two notes, with Caselli's endorsements, for 27,500 dollars more; [appellants' 12th point, VI.—(1);] even then no liability, as against any defendant other than Emile Louis Lahens, would have been established.

The insurmountable difficulty would still remain that the consent of his partners to the transaction is not proved, and no evidence is furnished of any grant of authority to him to pledge the firm's name in matters not in any manner relating to his business.

All the exceptions taken to the admission or exclusion of evidence, directed to establish the fact that, as between Pickersgill and Caselli, the consideration for the reception of the endorsements was such as it is insisted on behalf of the appellants the evidence tends to show it was, are unimportant. The fact remains that the endorsements are not the endorsements of the firm; that they have no connection with its business, and were made without the authority or consent of the members of the firm other than of the one who wrote them, and all this Mr. Pickersgill knew when he took them.

166 III. The exception to the exclusion of the defendants' articles of copartnership is untenable. It was offered after the plaintiffs had rested, and the referees had announced their conclusion to nonsuit the plaintiffs. It was discretionary with the referees to admit further evidence, and it certainly was not error to exclude proffered evidence, when the plaintiffs' counsel would not state his belief that it would tend to show authority in Emile Louis Lahens to make the endorsements in question. As the case is made up, the court cannot see or conjecture that, if admitted, it would have aided the plaintiffs, and therefore cannot see that they have been prejudiced by its rejection.

IV. The fact that the defendants are accommodation endorsers of A. Caselli, and that he is therefore interested in the event of the suit, did not affect his competency as a witness at the time his deposition was read in evidence. Had he been examined orally at the trial as to the same matters, he would have testified under precisely the very interest that existed when he was examined under the commission. And the fact that he testified under the bias which the existing interest may have created, did not affect the competency of his testimony when offered.

3 Cowen & Hill's & Edwards' Notes, p. 120.

If the deposition of A. Caselli, taken under the commission, be rejected nd stricken from the case, there could not even then, by any possi-

bility, be a recovery by the plaintiffs. There would be a total absence of evidence tending to show a joint liability of all the defendants.

The judgment should be affirmed.

167 STATE OF NEW YORK, *ss.:*

Pleas in the court of appeals, held at the capital, in the city of Albany, on the ninth day of October, in the year of our Lord one thousand eight hundred and sixty-seven, before the judges of said court.

Witness the Hon. Henry E. Davis, chief judge, presiding.

[SEAL.] R. A. JONES, *Clerk.*

Remititur.

THOMAS FIELDEN, DANIEL CAMPBELL, AND William C. Pickersgill, survivors of Joshua Fielden & others, appellants,
vs.
PIERRE F. LAHENS, EDWARD E. LAHENS, AND Louis E. Lahens, survivors of Edward A. Goudard, respondents.

Office clerk court of appeals, Albany, N. Y., Oct. 21, 1867.

Be it remembered that on the eighteenth day of August, in the year of our Lord one thousand eight hundred sixty-two, Thomas Fielden and others, plaintiffs, the appellants in this action, came here into court of appeals by Messrs. Larocque & Barlow, their attorneys, and filed in the said court a notice of appeal and return thereto, from a judg-
168 ment at the superior court of the city of New York, and Pierre F. Lahens and Edward E. Lahens, respondents in said action, afterwards appeared in said court of appeals by Mr. T. J. Glover, their attorney, and the respondent, Louis E. Lahens, by Mr. W. W. Van Wagener, his attorney, which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, the said appeal having been argued by Mr. J. Larocque, of counsel for the appellants, and by Mr. Cha's O'Conner, of counsel for respondents, and after due deliberation had thereon, did order and adjudge that the judgment of the superior court of the city of New York, in favor of the respondents Pierre F. Lahens and Edward E. Lahens, be in all things affirmed and stand in full force, strength, and effect, and that the said respondents, Pierre F. Lahens and Edward E. Lahens, recover of the said appellants their costs of appeal in this court; and it was further ordered and adjudged that the judgment of the said superior court, in favor of the respond-
ent Louis E. Lahens, be reversed, annulled, and altogether
169 held for nothing, and that a new trial be ordered, costs to abide the event thereof; and it was, also, further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said superior court, there to be proceeded upon according to law. Therefore, it is considered that the said judgment, in favor of the said Pierre F. & Edward E. Lahens, be and the same is hereby in all things affirmed, with costs as aforesaid, and that the said judgment in favor of the said Louis E. Lahens, and the same is hereby reversed and new trial ordered, costs to abide the event as aforesaid, and hereupon as well the notice of appeal and return thereto aforesaid, as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the said supreme court of the city of New York, before the justice thereof, according to form of

the statute in such case made and provided, to be enforced according to law, and which record now remains in the said superior court before the justice thereof, &c.

170 C. H. YOUNG,
Deputy Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, Oct. 21, 1867.

I hereby certify that the record contains a correct transcript of the proceedings in said actions in the court of appeals, with the papers originally filed therein attached thereto.

C. H. YOUNG,
Deputy Clerk.

Superior court.

THOMAS FIELDEN & O'RS, APPELLANTS,
ag'st.
PIERRE F. LAHENS & O'RS, RESPONDENTS.

You will please take notice that on the remititur herein, a motion will be made at a special term of this court, to be held at the City Hall in the city of New York, on the 25th day of October, 1867, at 10
171 a. m., to make the judgment of the court of appeals herein the judgment of this court, and for such other and further relief as to the court may seem just.

Dated October 22d, 1867.

Yours, &c.,

T. J. GLOVER,
Att'y for Resp'd'ts, P. F. & E. E. Lahens.

To BOWDOIN, LAROCQUE & BARLOW, Esqrs.,
For Appellants.

COUDERT BROTHERS,
For Resp'd't L. E. Lahens.

At a special term of the superior court of the city of New York, held at the City Hall in the city of New York, on the 25th day of October, 1867,

Present, Hon. John M. Barbour, Justice.

THOMAS FIELDEN, DANIEL CAMPBELL, AND William C. Pickersgill, survivors of Joshua Fielden and o'rs, appellants,
172 *against*
PIERRE F. LAHENS, EDWARD F. LAHENS, and Louis E. Lahens, survivors of Edward A. Goudard, respondents.

This cause having been brought on upon the remititur herein sent down from the court of appeals, and now filed in this court, by which remititur it appears that an appeal was taken by the plaintiffs from the judgment of this court to the said court of appeals, and that the judgment of this court, in favor of the respondents Pierre F. Lahens and Edward E. Lahens, was by the said court of appeals in all things affirmed, and ordered to stand in full force, strength and effect, and that the said respondents, Pierre F. Lahens and Edward E. Lahens, recover of the [illegible] appellants their costs of appeal in said court of

Appeals; and it was further ordered and adjudged, that the judgment
of said superior court, in favor of the respondent Louis E. Lahens, was
reversed, annulled, and altogether held for nothing, and that a new
173 trial was ordered, costs to abide the event, and that the records
and proceedings were directed by said court of appeals to be
remitted to this court, there to be proceeded upon according to law;
and thereupon it was considered that the said judgment in favor of the
said Pierre F. Lahens and Edward E. Lahens, be, and the same was
thereby, in all things affirmed, with costs as aforesaid, and that the said
judgment in favor of the said Louis E. Lahens be, and the same was
thereby, reversed and a new trial ordered, costs to abide the event as
aforesaid, and thereupon the notice of appeal and return thereto, and
the judgment of the court of appeals aforesaid by them given in the
premises, were by the said court remitted to the said superior court,
according to the form of the statute in such case made and provided,
to be enforced according to law:

Now, therefore, on motion of T. J. Glover, attorney for the respond-
ents, Pierre F. Lahens and Edward E. Lahens, it is ordered and adjudged,
that the judgment of the said court of appeals be, and the same is
hereby, made the judgment of this court, and that said respond-
174 ents, Pierre F. Lahens and Edward E. Lahens, have judgment
against said appellants, Thomas Fielden, Daniel Campbell, and
William C. Pickersgill, survivors of Joshua Fielden and others, for the
sum of two hundred and fifty-four $\frac{42}{100}$ dollars, costs and disbursements
on said appeal, as adjusted by the clerk of this court, and that said
respondents have execution therefor, and that this order and judgment
be annexed to the judgment record herein.

Enter.

J. M. B.

175 At a special term of the superior court of the city of New
York, held at the City Hall in the city of New York, on the 23d
day of December, in the year one thousand eight hundred and sixty-
seven:

Present, Hon. Samuel Jones, Justice.

THOMAS FIELDEN AND WILLIAM C. PICKERS-
gill, surviors of Joshua Fielden, James Fielden,
and Daniel Campbell,
against
LOUIS E. LAHENS.

On reading and filing affidavits of Joseph Larocque and William C.
Pickersgill, and notice of motion and proof of due service thereof on the
attorney for the defendant, no one appearing to oppose, and on reading
the remititur from the court of appeals duly made the judgment of this
court, and it appearing from said papers among other things that the
judgment heretofore rendered by this court in this cause in favor of the
then defendants, Pierre F. Lahens, Edward E. Lahens, Augustine
E. Gaudard, and Louis E. Lahens, against the then plaintiffs,
176 Thomas Fielden, William C. Pickersgill, and Daniel Campbell,
was affirmed by the court of appeals as to the said Pierre F.
Lahens, Edward E. Lahens, and Augustine E. Gaudard, and reversed as
to the said Louis E. Lahens, and a new trial ordered as to the said Louis
E. Lahens; that the said former plaintiff, Daniel Campbell, is now de-
ceased, and that the cause of action survives to the remaining plaintiffs;

and this cause was formerly referred to and the former trial had befor Robert Emmet, George C. Goddard, and William Betts, esquire, coun sellors-at-law, as referees, and that the trial thereof will involve th examination of a long account, and on motion of Mr. Larocque, on the part of the plaintiffs, no one opposing, it is ordered that this action proceed and be continued in the names of Thomas Fielden and William C. Pickersgill, survivors of Joshua Fielden, John Fielden, James Fielden, and Daniel Campbell as plaintiffs, against Louis E. Lahens as defendant, and that the former referees be, and they are hereby, discharged, and be, and the same is hereby, referred to the Honorable Theron R. Strong, of the city of New York, counsellor-at-law, to hear and determine the same, and that the plaintiffs have ten dollars costs of this motion to be costs in the cause.

Enter. S. JONES, *Justice.*

177 N. Y. superior court.

THOMAS FIELDEN AND WILLIAM C. PICKERSgill, survivors, &c.,
vs.
LOUIS E. LAHENS.

To the Superior Court of the city of New York:

This cause having been tried before the undersigned, sole referee therein, and the proofs and allegations of the parties having been heard and duly considered, he does find the following facts:

1. That on the 25th day of May, in the year 1844, one Alexander Casselli procured the defendant, Louis Emile Lahens, to endorse with the name of the firm of J. Lahens & Company, of which the said defendant was then a member, and of which the other original defendants in this action were the other members, two promissory notes made by the said Alexander Casselli, bearing date the said 25th day of May, in the year 1844, and payable to the order of the said J. Lahens &
178 Company, one for $14,000, payable 60 days after date, the other for $13,500, payable ninety days after date, being two of those described in the declaration in this action.

2. That on the same 25th day of May, in the year 1844, the said Alexander Casselli caused the said last-mentioned promissory notes to be delivered to William C. Pickersgill, one of the plaintiffs herein, for and on account of the original plaintiffs in this action, carrying on business at New York, under the name of W. C. Pickersgill and Company, and at Liverpool, England, under the firm-name of Fielden Brothers & Company.

3. That on the 30th day of May, in the year 1844, the said Alexander Casselli in like manner procured the said defendants to endorse with the name of the firm J. Lahens & Company, of which the said defendant was then a member, another promissory note made by the said Alexander Casselli, bearing date the said 25th day of May, in the 1844, and payable to the order of the said J. Lahens & Company 90 days after date, for the sum of $21,221$\frac{43}{100}$, being the other promissory note
179 described in the declaration in this action.

4. That on the same 30th day of May, in the year 1844, the said Alexander Casselli caused the said last-mentioned promissory note to be delivered to the said William C. Pickergill, one of the plaintiffs herein, for and on account of the original plaintiffs in this action, then carrying on business as aforesaid, at New York, under the firm-name of W. C. Pick-

Pickersgill & Company, and at Liverpool, England, under the firm-name of Fielden Brothers & Company.

5. That all the said notes were respectively so endorsed by the said defendant, for the benefit and accommodation of the said Alexander Casselli, without consideration, and without the knowledge, authorization, or consent of his copartners in the said firm of J. Lahens & Company, or any of them.

6. That, prior to the endorsement of any of the said notes by the said defendant, the said Alexander Casselli represented to him that he had theretofore made and exhibited to the said William C. Pickersgill statements based upon notices and memoranda of sales of portions of property consigned by the said Casselli to the said Fielden Brothers & Company, at Liverpool, for sale on his account, of which no regular account sales had been received, purporting to show certain particulars as to the state of his account with the said Fielden Brothers and Company, and had applied to the said William C. Pickersgill to advance to him, on account of his said firm, a certain amount of money for which he claimed credit with the plaintiffs, said firms, on the footing of said statements, and which amount of money the said William C. Pickersgill (as the said Casselli also represented to the defendant) had accordingly advanced to him on account of his said firms, taking from him, the said Casselli, certain commercial paper made by third persons, belonging to him, said Casselli, to an amount equal to or exceeding the amount of all said notes so endorsed by the said defendant, as security that the said statements so made, and exhibited by the said Casselli to the said Pickersgill, should prove to be correct. And the said Casselli further represented to the said defendant as aforesaid, that the said statements so made and exhibited by him to the said William C. Pickersgill was correct, and applied to the said three promissory notes, to be delivered to the said W. C. Pickersgill & Company in exchange for the said commercial paper already held by them as aforesaid, and to be held on the said terms as they had previously held the said other commercial paper.

7. That the defendant, confiding in the said representations of the said Casselli, endorsed and delivered to him the said three notes, as aforesaid, to be delivered to the said W. C. Pickersgill & Company in substitution for an equivalent amount of the said other commercial paper.

8. That on the 23d day of May, in the year 1844, the said William C. Pickersgill, on behalf of his said firm, placed in the hands of the said Alexander Casselli the said papers made by third parties alluded to by said Casselli, in his said representations to the defendant, amounting altogether to the sum of $55,000, which had been previously deposited by the said Casselli with the said Pickersgill, on behalf of his said firm, and upon the faith and security of which the said Pickersgill had, at and subsequently to the time of such deposit, advanced to the said Casselli the full amount thereof in money, such advances not having been made in whole or in part upon the basis of any statement made or exhibited by said Casselli, and having no reference or relation to any such statement that the said paper was so placed by the said Pickersgill in the hands of the said Casselli, at the request of the said Casselli, to enable him to exchange the same for and upon his express promise to deliver to the said William C. Pickersgill, on behalf of his said firm, in exchange therefor the promissory note or notes of the said J. Lahens & Company for $27,000, and other good business paper for the balance, or else to return to the said W. C. Pickersgill and Company the said paper so handed to him.

9. That the three notes in suit in this action, endorsed by the defendant with the firm-name of J. Lahens & Company, were caused by the defendant to be delivered to the said Pickersgill on behalf of his said firm, and accepted by the said Pickersgill on behalf of his said firm in discharge (to the extent of their amount) of the promise so made, and other business paper to the amount of $6,278 57 was so delivered and accepted on the 27th day of May, in the year 1844, in discharge thereof as to the residue of said amount.

10. That neither the said William C. Pickersgill, nor any of his co-partners, the original plaintiffs in this action, had any knowledge, notice, or information at any time prior to the maturity of the said
184 notes sued upon in this action of any of the said representations made by the said Casselli to the said defendants as aforesaid, or of any restriction placed by the said defendant upon the use which the said Casselli was at liberty to make of the same notes so endorsed.

11. That the full amount of the said promissory notes with interest remains and is due from the said Alexander Casselli to the plaintiffs on account of their advances to him upon the said business paper for which the notes so endorsed and in suit in this action were substituted as aforesaid, in addition to all other amounts due from the said Alexander Casselli to the said plaintiffs, and over and above all credits and offsetts to which he is entitled.

12. That the said three promissory notes of the said Alexander Casselli so endorsed by the defendants with the firm-name of J. Lahens and Company, were duly presented at the instance and by pro-
185 curement of the plaintiffs to the said Alexander Casselli for payment at the maturity thereof respectively, and payment thereof respectively duly demanded of him and refused, and due and timely notice of such presentment, demand, and refusal, and that the holders looked to the endorsers for the payment thereof respectively given to the defendant, and that the said notes, with interest to this date, amount to the sum of one hundred and twenty-nine thousand four hundred and twenty-nine dollars and fifty-two cents, ($129, 429 52.)

And the said referee hereby declares the following conclusions of law from the foregoing facts:

1. That the plaintiffs are bona fide holders for full value of the endorsements sued upon in this action as against the said defendant, Louis E. Lahens.

2. That they are entitled to judgment against him for the said sum of one hundred and twenty-nine thousand four hundred and twenty-nine dollars and fifty-two cents, (129,429 52,) and for the costs of this action, and judgment is ordered accordingly.

Dated New York, April 16, 1868.

T. R. STRONG, *Referee.*

186 Superior court of the city of New York.

THOMAS FIELDEN AND WILLIAM C. PICKERSGILL, survivors of Joshua Fielden and others,

against

LOUIS EMILE LAHENS.

The plaintiffs hereby waive their right to and remit the costs of this action, as against the defendant.

New York, April 17, 1868.

BOWDOIN, LAROCQUE & BARLOW,
Atty's for Pl'ff's.

187 Superior court of the city of New York.

THOMAS FIELDEN AND WILLIAM C. PICKERSgill, survivors of Joshua Fielden, John Fielden, James Fielden, and Daniel Campbell,
against
LOUIS EMILE LAHENS.

Judgment this seventeenth day of April, A. D. 1868.

This action having originally commenced by Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill, plaintiffs, against Pierre Francois Lahens, Augustine Edouard Gaudard, Louis Emile Lahens, and Edouard Ernest Lahens, defendants, and pending this action four of the plaintiffs, to wit: Joshua Fielden, John Fielden, James Fielden, and Daniel Campbell, and one of the defendants, to wit: Augustine Edouard Gaudard, having died, and this action having, by orders of this court duly made and entered, been continued by the surviving plaintiffs against the surviving de-
188 fendants, and by a judgment entered in this action on the twenty-first day of October, in the year one thousand eight hundred and sixty-one, judgment of nonsuit having been rendered in favor of the said surviving defendants against the said surviving plaintiffs and the said Daniel Campbell, who was then living, which judgment was subsequently, on appeal to the court of appeals, affirmed by the said court of appeals as to the defendants, Pierre Francois Lahens and Edouard Ernest Lahens, and reversed and a new trial ordered as to the defendant, Louis Emile Lahens, and the said judgment of the court of appeals having by an order of this court made and entered herein on the twenty-fifth day of October, in the year one thousand eight hundred and sixty-seven, been made the judgment of this court, and this action and all the issues therein having by an order of this court made and entered herein on the twenty-third day of December, in the year one thousand eight hundred and sixty-seven, been referred to the Hon. Theron R.
189 Strong, as sole referee to hear and determine the same, and the said referee having made his report in writing bearing date the sixteenth day of April, in the year one thousand eight hundred and sixty-eight, directing judgment in favor of the plaintiffs, against the defendant, Louis Emile Lahens, for one hundred and twenty-nine thousand four hundred and twenty-nine dollars and fifty-two cents, and the said plaintiffs having duly waived their right to and remitted the costs of this action as against the said defendants: Now, on reading and filing the said report of the said referee, and on motion of Bowdoin, Larocque & Barlow, attorneys for the plaintiffs, it is adjudged by this court that Thomas Fielden and William C. Pickersgill, as survivors of Joshua Fielden, John Fielden, James Fielden, and Daniel Campbell, the plaintiffs in this action, do recover of Louis Emile Lahens, the defendant herein, the said sum of one thousand and twenty-nine thousand four hundred and twenty-nine dollars and fifty-two cents.

JAMES M. SWEENEY,
Clerk.

Roll filed April 17, 1868.

190 All which we have caused by these presents to be exemplified, and the seal of the superior court of the city of New York to be hereunto affixed.

Witness Samuel B. Garvin, esquire, presiding justice of our said court, at the City Hall of the city of New York, this 22d day of April, A. D. 1868.

JAMES M. SWEENEY, *Clerk.*

Superior court of the city of New York.

THOMAS FIELDEN & OTHERS
against
LOUIS EMILE LAHENS.

I, Samuel B. Garvin, presiding justice of the supreme court of the city of New York, do hereby certify that James M. Sweeney, whose name is subscribed to the proceeding exemplification, is the clerk of the said superior court, duly appointed and sworn, and that full faith and credit are due to his official acts. I further certify that the seal
191 affixed to the said exemplification is the seal of the *the* said superior court of the city of New York, and that the attestation thereof is in due form of law.

Dated New York, April 22d, 1868.

S. B. GARVIN,
Presiding Justice of the Superior Court of the City of New York.

STATE OF NEW YORK,
City and County of New York, ss:

I, James M. Sweeney, clerk of the superior court of the city of New York, do hereby certify that Samuel B. Garvin, whose name is subscribed to the preceeding certificate, is the presiding justice of the superior court of the city of New York, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereto set my hand and affixed the seal of the said court this 22d day of April, 1868.

[SEAL.] JAMES M. SWEENEY, *Clerk.*

192 (Endorsed:) New York superior court. Thomas Fielden et al. against Pierre F. Lahens et al. Exemplified copy of judgment roll. U. S. circuit court, southern district of N. Y. In equity. Exhibit "A," referred to in case of Thomas Fielden & an'r, survivors, &c., against Louis Emile Lahens individually, and Louisa Jones and John Binssee. Bowdoin, Larocque & Barlow, sol'rs for pl'ffs, 35 William st., N. Y. Filed Aug. 20, '68.

193 The people of the State of New York, by the grace of God free and independant, to all to whom these presents shall come, or may concern, greeting:

Know ye that we, having examined the records and files in the office of the clerk of the county of New York, and clerk of the supreme
[SEAL.] court of said State for said county, do find a certain order there remaining in the words and figures following, to wit:

At a court of chancery held for the State of New York, at the city of New York, on the twenty-fifth day of April, in the year 1846—

Present, William T. McConn, vice-chancellor of the first circuit.

PIERRE F. LAHENS ET AL.
vs.
JOSHUA FIELDEN ET AL.

The order to shew cause why the injunction heretofore granted in this cause should not be restored till the further order of this court, and be so modified as expressed in the said order, &c., having come on
194 to be heard, and the bill of complaint, the answers of all the defendants, the said injunction, two affidavits of William W. Van Wagenen, with a copy affidavit of William C. Pickersgill thereto

annexed, and affidavit of Alexander Cassélli, with a copy letter of William C. Pickersgill thereto annexed, the exceptions taken to the respective answers of all the defendants with notice that the same would be read, and the said order to show cause, having all been read on the part of the complainants, and on affidavit of Francis Griffen, with copies order dissolving the injunction and order affirming the same on appeal, and other papers thereto annexed having been read on the part of the defendants, and Messrs. W. W. Van Wagenen and David B. Ogden having been heard on behalf of the complainants, and Mr. George Griffin on behalf of the defendants, it is ordered that the application of the c mplainants, so far as it seeks to have restored the former injunction or to obtain a new injunction in this cause to restrain further proceedings at law upon the promissory notes or either of them referred to in
195 the bill of complaint in this cause, until a final decree in this cause or until the further order of the court, be denied.

And it is further ordered, on the application of the complainant, Louis Emile Lahens, and on motion of the counsel for the said complainants, that upon filing with the clerk of this court the bond now tendered, executed by the said Louis Emile Lahens and John Lafarge to the said Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickergill, which is hereby approved, and is also approved by an endorsement in writing thereon signed by the said vice-chancellor of the first circuit, an injunction issue out of this court, under the seal thereof, addressed to the said defendants, their attorneys, counsellors, solicitors, and agents, restraining them and each of them from proceeding to the trial of a certain personal action now pending and at issue in the superior court of the city of New York, (being the suit at law hereinbefore mentioned and referred to,) wherein the said Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill are plaintiffs, and the said Pierre F. Lahens, Augustine Edward Goudard, Louis
196 Emile Lahens, and Edward Ernest Lahens are defendants, until the answers of the said defendants to the exceptions taken by the complainants to their former answers in this cause respectively be perfected.

And it is further ordered, that the costs of this application abide the final decree in this cause.

("Endorsed:") Filed April 25, 1846. In chancery before the vice-chancellor. Referred to in case of Thomas Fielden & an'r, survivors, &c., against Louis Emile Lahens & an'r, exe'x, exe'or, &c. Bowdoin, Larocque & Barlow, sol'rs for pl'ffs. Order for injunction. Enter the within order. W. C. McConn, V. C.

197 All which we have caused by these presents to be exemplified, and the seal of our said supreme court to be hereunto affixed.

Witness George G. Barnard, justice, at the city of New York, the 13th day of August, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independance the ninety-third.

CHA'S E. LOEW, *Clerk.*

I, George G. Barnard, presiding justice of the supreme court of the State of New York for the city and county of New York, do hereby certify that Charles E. Loew, whose name is subscribed to the proceeding exemplification, is the clerk of the said county of New York and clerk of said supreme court for said county, duly elected and sworn, and that full faith and credit are due to his official acts. I further certify

that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated New York, August 13th, 1868.

GEORGE G. BARNARD, *J.*

198 STATE OF NEW YORK,
City and County of New York, ss:

I, Charles E. Loew, clerk of the supreme court of said State in and for the city and county of New York, do hereby certify that George G. Barnard, whose name is subscribed to the proceeding certificate, is presiding justice of the supreme court of said State in and for the city and county of New York, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereto set my hand and affixed the seal of the said court this 13th day of Aug., 1868.

[SEAL.] CHA'S E. LOEW, *Clerk.*

(Endorsed:) U. S. circuit court, southern district of New York. In equity. Exhibit "B," referred to in case of Thomas Fielden and ano., survivors, &c., against Louis Emile Lahens & ano., ex'or, exe'x, &c. Bowdoin, Larocque & Barlow, sol'r for pl'ffs. Filed Aug. 20, '68.

199 The people of the State of New York, by the grace of God free and independant, to all to whom these presents shall come, or may concern, greeting:

Know ye that we, having examined the records and files in the office of the clerk of the county of New York, and clerk of the supreme court of said State for said county, do find a certain affidavit there remaining in the words and figures following, to wit:

Supreme court, in equity, late before v. ch. 1st ct.

PIERRE F. LAHENS ET AL.
vs.
JOSHUA FIELDEN ET AL.

CITY AND COUNTY OF NEW YORK, *ss.:*

William W. Van Wagenen, solicitor for the complainants in the above-entitled cause, being duly sworn, doth depose and say, that on the 26th day of July, A. D. 1844, the bill of complaint in this cause was filed, and a preliminary injunction without notice was granted, restrain-
200 ing the defendants from negotiating certain promissory notes mentioned in the said bill, and also restraining proceedings at law thereon.

And this deponent further saith, that on or about the seventh day of October, in the same year, upon the application of the defendants, the said injunction was dissolved, with liberty to the complainants to apply to have the same restored upon the coming in of the defendants' answer, a copy of which order and of the order affirming the same are hereto annexed, marked (C) and (D.) That such decision was made upon the ground that a portion of the facts set forth in the bill of complaint, which the court considered material, were stated on belief only, and that no corrob'ating affidavit as to such facts had been annexed to the said bill.

And this deponent further saith, that on the twenty-sixth day of March, in the year one thousand eight hundred and forty-six, copies of the answers of all the defendants in this cause were served upon this deponent; that such answers did not make, nor did they pretend to make,

any discovery of the amount of moneys which had been realized
201 above a just pro rata of advances and charges by the defendants at Liverpool, from the consigned property of Alexander Casselli, at the period referred to in the said bill of complaint; that such discovery this deponent believed to be legally called for by the said bill, and that this deponent excepted to the said answers for insufficiency; that the said exceptions were submitted to, and that copies of the further answers of the said defendants were served upon this deponent on the eighteenth day of December, instant.

And this deponent further saith, that on or about the eighth day of October, A. D. 1844, a suit at law was commenced by the said defendants against the said complainants in the superior court of the city of New York on the three several promissory notes referred to in the bill of complaint in this cause; that issue has been joined in the said suit at law, and that the above defendants, the plaintiffs therein, have been restrained from proceeding to trial therein by an order of the vice
202 chancellor of the first circuit, a copy whereof is hereto annexed, marked (A;) and this deponent further saith, that on the granting of the said last-mentioned order a bond in pursuance thereof, satisfactory to the defendants and exception whereto was waived, was filed with the clerk of the court of chancery.

And this deponent further saith, that the copy answer of the said Pickersgill, as served upon this deponent, had annexed thereto a copy jurat showing that the said answer had been sworn to on the twenty-first day of January, A. D. 1845, and the law partner of the solicitor for defendants afterwards stated in open court that the said answer had been twice sworn to.

And this deponent further saith, that, as this deponent verily beleives, every effort has been made by and on behalf of the above defendants to bring on to trial the said suit at law, and to stay proceedings
203 in this cause with a view, as this deponent verily beleives, of depriving the complainants of the benifit of presenting the true position of the accounts between the said defendants and the said Alexander Casselli, and of depriving the above complainants of the benifit of a just discovery to be made by the defendants, and further with the view of compelling the complainants to introduce the answer of the defendant Pickersgill as testimony for the complainants, and thus deprive them of the power of contradicting the same by the affidavit of the said Pickersgill.

And this deponent further saith, that he verily beleives this cause to be one where the investigation and decree of this honorable court is eminently appropriate, and that the true ends of justice can only be obtained with certainty by submitting the cause to the judgment of this court.

And further this deponent saith, that a copy affidavit in this cause, whereof this deponent annexes hereto a copy marked (E,) was served upon this deponent by the solicitor for the defendants on the sixth day of March, in the year eighteen hundred and forty-six, as a por-
204 tion of the foundation of an application to the court of chancery for four months further time to take the answers of the defendants.

And further saith not.

W'M W. VAN WAGENEN.

Sworn to this 23d day of December, A. D. 1847, before me,
W'M H. GRISWOLD,
Comm'r of Deeds.

All which we have caused by these presents to be exemplified, and the seal of our said supreme court to be hereunto affixed.

Witness George G. Barnard, justice, at the city of New York, the 13th day of August, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-third.

CHA'S E. LOEW, *Clerk.*

I, George G. Barnard, presiding justice of the supreme court of the State of New York for the city and county of New York, do hereby certify that Charles E. Loew, whose name is subscribed to the preceeding ex-
205 emplification, is the clerk of the said county of New York, and clerk of said supreme court for said county, duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated New York, August 3d, 1868.

GEORGE G. BARNARD, *J.*

STATE OF NEW YORK,
City and County of New York, ss.:

I, Charles E. Loew, clerk of the supreme court of said State in and for the city and county of New York, do hereby certify that George G. Barnard, whose name is subscribed to the preceeding certificate, is presiding justice of the supreme court of said State in and for the city and county of New York, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereto set my hand and affixed the seal of the said court this 13th day of August, 1868.

[SEAL.] CHA'S E. LOEW, *Clerk.*

206 (Endorsed:) U. S. circuit court, southern district N. Y. In equity. Exhibit "C." Referred to in case of Thomas Fie'den and ano., survivors, &c., against Louis Emile Lahens & ano., Exe'x, Exe'or, &c. Bowdoin, Larocque & Barlow, sol'rs for pl'ff. Filed Aug. 20, '68.

207 United States circuit court for the southern district of New York.

THOMAS FIELDEN & WILLIAM C. PICKERGILL, compl'ts,
ag'st
LOUIS EMILE LAHENS, LOUISA JONES, EXE'X, &c., John Binsse, exe'r, &c., of John La Farge, dec'd, def'ts.

Please take notice that I appear as solicitor for the defendant, Louis Emile Lahens, one of the defendants in this suit. You will please enter my appearance accordingly.

New York, Sept. 16th, 1868.

Yours, &c.,

FRANCIS H. DYKERS.

To KENNETH G. WHITE, Esq.,
Clerk U. S. Circuit Court, Southern District of New York.

(Endorsed:) U. S. circuit court. Thomas Fielden et al. ag'st Louis Emile Lahens. No. of appearance for def't Louis E. Lahens. Filed Oct. 3, '68.

208 United States circuit court for the southern district of New York.

THOMAS FIELDEN AND WILLIAM C. PICKERSgill, compl'ts,
vs.
LOUIS EMILE LAHENS, LOUISA JONES, EX'X, &c., JOHN BINSSE, ex'r, &c., of JOHN LA FARGE, dec'd, def'ts.

Please take notice that I appear as solicitor for the defendants, Louisa Jones, ex'x, and John Binsse, exe'r, &c., of John La Farge, dec'd, two of the defendants in this suit. You will please enter my appearance accordingly.

New York, Sept. 16th, 1868.

Yours, &c.,

T. J. GLOVER,
Sol'r, 44 Wall St.

To KENNETH G. WHITE, Esq.,
Clerk U. S. Circuit Court, Southern District N. Y.

(Endorsed:) U. S. circuit court. Thomas Fielden et al. vs. Louis Emile Lahens et al. No. of appearance for def'ts Louisa Jones and John Binsse, ex'x & ex'r, &c. Filed Oct. 3, '68.

209 In the circuit court of the United States for the southern district of New York.

THOMAS FIELDEN AND WILLIAM C. PICKERSgill, compl'ts,
vs.
LOUIS EMILE LAHENS ET AL.

The demurrer of Louis Emile Lahens, one of the defendants, to the bill of Thomas Fielden and William C. Pickergill, complainants:

This defendant, by protestation not confessing or acknowledging all or any of the matters and things in the said complainants' bill contained to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur to the said bill, and for causes of demurrer shows: First, that it appears by the said bill that John Lafarge therein named was not several bound in and by said obligation therein set forth, but only jointly bound with said Louis Emile Lahens, therein named; that said John La Farge received
210 no consideration for becoming an obligor in said bond; that he was not interested in any of the matters in consequence whereof it was given, and was merely a surety therein, and that he departed this life before the filing of said bill, leaving the said Louis E. Lahens surviving him, who is still alive. And secondly, for that by the law of the said State of New York, existing when said bond was given, the said plaintiffs in said action could not, nor could any of them, have recovered in the said action against the said Louis Emile Lahens except on a promise made by him jointly with Pierre F. Lahens and Edward Ernest Lahens therein named; and that the law of the said State, passed subsequent to the giving of the said bond, by means whereof the recovery against the said Louis E. Lahens in said bill mentioned was had, was inoperative in the premises as against the said John La Farge and his representative. And thirdly, for that it does not appear by

211 the said bill that any money was recovered by the said plaintiffs, or any of them in the aforesaid action at law, or that the collection of any money was stayed as in the condition of said bond mentioned in the aforesaid action at law within the tenor and effect and true intent or meaning of the said bond or the condition thereof. And fourthly, that there being no right to maintain said bill for equitable relief against the said executor and executrix, &c., of John La Farge, dec'd, the complainants have a full and perfect remedy at law against this defendant as to all and every the matters and things and pretended causes of suit in the said bill alleged by reason whereof the said bill cannot be maintained in this court touching the same or any of them, or any part thereof; wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto, and he prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

FRANCIS H. DYKERS,
Solicitor for L. E. Lahens.

CH. O'CONNER,
Of Counsel.

212 In the circuit court of the United States for the southern district of New York.

THOMAS FIELDEN AND WILLIAM C. PICKERSgill, compl'ts,
vs.
LOUIS EMILE LAHENS ET AL., DEF'TS.

SOUTHERN DISTRICT OF NEW YORK, *ss.:*

Louis Emile Lahens, one of the defendants above named, being duly sworn, says that the demurrer of this defendant to the bill of complaint of the above-named complainants is this suit is not interposed for delay, and further saith not.

L. E. LAHENS.

Sworn to before me this 12th day of October, 1868.
EDWARD L. OWEN,
U. S. Commissioner.

213 In the circuit court of the United States for the southern district of New York.

THOMAS FIELDEN ET AL., COMPL'TS,
vs.
LOUIS EMILE LAHENS, DEF'TS.

I certify that in my opinion the demurrer of the defendant, Louis Emile Lahens, to the bill of complaint in this suit, is well-founded in point of law.

New York, Oct. 12th, 1868.

CH. O'CONOR,
Of Counsel.

(Endorsed:) Circuit court of the United States for the southern district of New York. Thomas Fielden & W'm C. Pickergill, compl'ts, vs. Louis Emile Lahens et al., def'ts. Demurrer of L. E. Lahans with aff't and cert. of counsel. F. H. Dykers, sol'r. Filed Oct. 17, '68.

214 In the circuit court of the United States for the southern district of New York.

THOMAS FIELDEN AND WILLIAM C. PICKERSGILL, compl'ts,
vs.
LOUIS EMILE LAHENS ET AL., DEF'TS.

The demurrer of Louisa Jones, ex'x, and John Binsse, ex'r, &c., of John La Farge, dec'd, two of the defendants to the bill of complaint of Thomas Fielden and William C. Pickersgill, complainants.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' bill contained to be true in such manner and form as the same are therein and thereby set forth and alleged, do demur to the said bill, and for causes of demurrer show, first, that it appears by the said bill that John La Farge therein named was not severally bound in and by said
215 obligation therein set forth, but only jointly bound with said Louis E. Lahens therein named; that said John La Farge received no consideration for becoming an obligor in said bond; that he was not interested in any of the matters in consequence whereof it was given, and was merely a surety therein, and that he departed this life before the filing of said bill, leaving the said Louis E. Lahens surviving him, who is still alive; and, secondly, for that by the law of the said State of New York existing when said bond was given the said plaintiffs in said action at law therein mentioned could not, nor could any of them, have recovered in the said action against the said Louis Emile Lahens, except on a promise made by him jointly with Pierre F. Lahens and Edward Ernest Lahens therein named, and that the law of the said State passed subsequently to the giving of the said bond, by means whereof the recovery against the said Louis E. Lahens in said bill mentioned was had,
216 was inoperative in the premises as against the said John Lafarge and his representatives; and, thirdly, for that it does not appear by the said bill that any money was recovered by the said plaintiffs, or any of them, in the aforesaid action at law, or that the collection of any money was stayed, as in the condition of said bond mentioned in the aforesaid action at law, within the tenor, effect, and true intent or meaning of the said bond or the condition thereof; and further for that the said complainants have not by their said bill made such a case as entitles them in a court of equity to any discovery from these defendants, or either of them, or to any relief against them as to the matters contained in said bill, or any of such matters, and that any discovery which can be made by these defendants, or either of them, touching the matters complained of in the said bill, or any of them, cannot be of any avail to the said complainants for any of the purposes for which a dis-
217 covery is sought against these defendants by the said bill, nor entitle the said complainants to any relief in this court touching any of the matters therein complained of; wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and they pray the judgment of this honorable court whether they, or either of them, shall be compelled to make any further or other answer to the said bill, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

T. J. GLOVER,
Solicitor for Louisa Jones, ex'x, & Jno. Binssi, ex'r, &c., of Jno. La Farge, dec'd.
CH. O'CONOR, *of Counsel.*

(Endorsed:) U. S. circuit court. Thomas Fielden et al. vs. Louis E. Lahens et al. Demurrer. T. J. Glover, solicitor, 44 Wall st.

218 In the circuit court of the United States for the southern district of New York.

THOMAS FIELDEN AND WILLIAM C. PICKERSgill, compl'ts.
vs.
LOUIS EMILE LAHENS, LOUISA JONES, EX'X, & John Binsse, ex'r, &c., of John La Farge, dec'd.

SOUTHERN DISTRICT OF NEW YORK, *ss.:*

Louisa Jones, one of the defendants above named, being duly sworn, says that the demurrer of the defendants, Louisa Jones, ex'x, and John Binsse, ex'r, &c., of John La Farge, dec'd, to bill of complaint of the above-named complainants in this suit is not interposed for delay.

And further she saith not.

LOUISA J. JONES,
Executrix.

Sworn to before me this 8th day of Oct., 1868.

R. E. STILWELL,
U. S. Com'r.

219 In the circuit court of the United States for the southern district of New York.

THOMAS FIELDEN ET AL., COMPL'TS
vs.
LOUIS EMILE LAHENS ET AL., DEF'TS.

I certify that in my opinion the demurrer of the defendants, Louisa Jones, ex'r'x, and John Binsse, ex'r, &c., of John La Farge, dec'd, to the bill of complaint in this suit is well-founded in point of law.

New York, Oct. 12th, 1868.

CH. O'CONNOR,
Of Counsel.

(Endorsed:) Circuit court of the United States, for the southern district of New York. Thomas Fielden & W'm C. Pickersgill, compl'ts, vs. Louis Emile Lahens & al., demurrer of ex'r & ex'r'x of Jno. La Farge, dec'd, with aff't & cert. of counsel. T. J. Glover, sol'r for ———, of Jno. La Farge, dec'd. Filed Oct. 17, '68.

220

221 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Wednesday, the fourth day of August, in the year of our Lord one thousand eight hundred and sixty-nine—

Present, the Honorable Samuel Nelson, judge.

THOMAS FIELDEN AND WILLIAM C. PICKERSgill
vs
LOUIS EMILE LAHENS, AND JOHN BINSSE, executors, and Louisa Jones, executrix, &c., of John La Farge, deceased.

This cause having come on to be heard on the demurrers of the de-

fendants, Mr. T. J. Glover and Mr. Charles O'Connor appearing for the defendants, and Mr. William McFarland for the complainants, and mature deliberation being thereupon had, it is ordered, adjudged, and decreed that the demurrer of the defendants be allowed, and the bill of complaint of the above-named complainants be dismissed, with liberty to the complainants to amend said complaint within thirty days, and if not so amended, that said bill stand dismissed with costs.

222

223 U. S. circuit court, S. D. of New York.

THOMAS FIELDEN ET AL.
vs.
LOUIS EMILE LAHENS ET AL.

Please take notice that the costs of the defendant, Louis Emile Lahens, and of the defendants, John Binsse et al., exe'r'x, &c., of John La Farge, deceased, will be taxed by the clerk of this court at his office, 39 Chambers street, in the city of New York, on Thursday next, Sept. 9th inst., at 10 a. m.

New York, Sept. 7th, 1869.

Yours, &c.,

F. H. DYKERS,
For L. E. Lahens.

T. J. GLOVER,
For Ex'rs of La Farge.

BOWDOIN LAROCQUE & BARLOW, Esq's,
Sol'rs for Compl'ts.

(Endorsed:) We admit due service of a copy of the within notice.
Sept. 7, 1869.

BOWDOIN LAROCQUE & BARLOW.

Filed Sept. 10th, 1869.

224

225 U. S. circuit court.

THOMAS FELDEN & O'RS
ag'st
LOUIS EMILE LAHENS ET AL.

1868. *Costs of heirs, La Farge:*

Sept. 4.	Paid clerk c'py bill of complaint	$11	50
"	" pl'g notice appearance		58
"	" " demurrer		63
"	" c'py demurrer took for the court	12	00
"	" pl'g note of issue	3	00
"	" pl'g decree, &c	84	60
	Sol'rs docket fee in equity	20	00
		132	31

Taxed at one hundred & thirty-two $\frac{31}{100}$ doll's this 10 September, 1869.

R. E. STILWELL,
Dep. Clerk.

Costs of def't Lahens:

Paid clerk pl'g notice of app'r'c's	57
" " " demurrer	62
Sol'rs docket fee in equity	20 00
	$21 19

Taxed at twenty-one $\frac{19}{100}$ dollars this 10 September, 1869.

R. E. STILWELL,
Dep. Clerk.

226 (Endorsed:) Circuit court of the U. S. Thomas Fielden et al. vs. Louis Emile Lahens et al. Bill of costs. T. J. Glover, sol'r for def't. Filed Sept. 10, 1869.

227 At a stated term of the circuit court of the United States of America, for the southern district of New York, held at the United States court rooms, in the city of New York, on the tenth day of September, in the year of our Lord one thousand eight hundred and sixty-nine—

Present, the Honorable Samuel Nelson, associate justice of the Supreme Court of the United States.

THOMAS FIELDEN AND WILLIAM C. PICKERSGILL,
vs.
LOUIS EMILE LAHENS AND JOHN BINSSE, EXECUTOR, and Louisa Jones, executrix, &c., of John La Farge, dec'd.

An order having heretofore been made in this cause, dated the fourth day of August, 1869, sustaining the demurrers of the defendants to the bill of complaint of the complainants, with liberty to the complainants to amend their bill of complaint within thirty days, and said complainants having elected not to amend the same, on motion of the solicitors for the defendants, it is ordered, adjudged, and decreed that this court, by virtue of the power and authority therein vested, doth order, adjudge, and decree that the demurrers of the defendants to the bill of complaint be, and they are hereby, sustained, and that the bill
228 of complaint of the complainants above named be, and the same is hereby dismissed, and that the defendant, Louis Emile Lahens, recover of the complainants, Thomas Fielden and William C. Pickersgill, the sum of twenty-one $\frac{19}{100}$ dollars for his costs and disbursements herein as taxed by the clerk of this court, and that the defendants, John Binsse and Louisa Jones, executor and executrix, &c., of John La Farge, deceased, do recover of the complainants, Thomas Fielden and William C. Pickersgill, the sum of one hundred and thirty-two dollars and thirty-one cents, for their costs and disbursements herein as taxed by the clerk of this court, and that they have execution therefor.

S. NELSON.

(Endorsed:) U. S. circuit court. Thomas Fielden et al. vs. Louis Emile Lahens et al. Final decree dismissing bill. T. J. Glover, sol'r for def'ts heirs, &c. Filed Sep't 22, '69.

229 U. S. circuit court for the southern district of New York.

THOMAS FIELDEN AND WILLIAM C. PICKERSGILL, plaintiffs,
against
LOUIS EMILE LAHENS AND JOHN BINSSE, executor, and Louisa Jones, executrix, of John Lafarge, deceased, defendants.

To the honorable the Supreme Court of the United States:

The appeal of William C. Pickersgill, one of the above-named plaintiffs, respectfully showeth, that on or about the twentieth day of August, one thousand eight hundred and sixty-eight, the above-named plaintiffs filed their bill of complaint in this suit in the circuit court of the United States for the second circuit, against the above-named defendants therein, alleging in substance that the said plaintiffs were and are residents of Liverpool, England, and aliens, subjects of her Majesty the Queen of Great Britain and Ireland, and surviving partners of the late firm
230 consisting of Thomas Fielden, Daniel Campbell, Joshua Fielden, John Fielden, James Fielden, and William C. Pickersgill, lately doing business as merchants and copartners at Liverpool, England, under the name, firm, and style of Fielden Brothers and Company, and at the city of New York under the name, firm, and style of William C. Pickersgill & Co.; and that on or about the year one thousand eight hundred and forty-four the said William C. Pickersgill & Co., whereof plaintiffs were surviving partners as aforesaid, commenced a personal action in the superior court of the city of New York against Pierre F. Lahens, Augustin Edward Gaudard, Louis Emile Lahens, and Edwin Ernest Lahens, then merchants and copartners, carrying on business at the city of New York, under the name, firm, and style of J. Lahens & Co.; that the said defendants, J. Lahens & Co., thereupon, on or about the twenty-fifth day of April, one thousand eight hundred and forty-six, applied in the court of chancery of the State of New York for an injunction staying the proceedings in the said first-mentioned action, and that as the condition of obtaining such injunction the said defendants, J. Lahens & Co., were required to file, and did file, a bond of the following tenor, that is to say:

"Know all men by these presents, that we, Louis Emile Lahens, of the city of New York, one of the complainants in the suit in chancery hereinafter mentioned, and John Lafarge of the said city of New
231 York, gentleman, are held and firmly bound unto Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill, the defendants in the said suit in chancery, in the sum of sixty thousand dollars, lawful money of the United States of America, to be paid to the said Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill, and their legal representatives, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators firmly by these presents, sealed with our seals, dated the twenty-third day of April, in the year of our Lord one thousand eight hundred and forty-six.

"Whereas a personal action is now pending and at issue in the superior court of the city of New York, between the said Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill, as plaintiffs, and Pierre F. Lahens, Augustin Edward Goudard, the said Louis Emile Lahens, and Edward Ernest Lahens, as defendants;

"And whereas a bill has been filed in the court of chancery of the State of New York, before the vice-chancellor of the first circuit, in which the said Pierre F. Lahens, Augustin Edward Goudard, Louis Emile Lahens, and Edward Ernest Lahens, are complainants, and the said Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill, are defendants, in which said
232 last-mentioned suit it hath been ordered by the said court of chancery before the said vice-chancellor of the first circuit, on the application of the said Louis Emile Lahens, that upon the filing of these presents, duly executed, with the clerk of the said court of chancery, an injunction shall be issued to stay the trial of the aforesaid personal action in the said superior court of the city of New York:

"Now, therefore, the condition of this obligation is such, that if the above bounden Louis Emile Lahens and John Lafarge, their heirs, executors, or administrators, shall well and truly pay, or cause to be paid, to the said Joshua Fielden, James Fielden, John Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill, or to their legal representatives, all moneys which may be recovered by the said Joshua Fielden, John Fielden, James Fielden, Thomas Fielden, Daniel Campbell, and William C. Pickersgill, or to their representatives, or the collection of which may be stayed by such injunction in the aforesaid action at law in the superior court of the city of New York, for debt or damages, and for costs therein, and shall also well and truly pay, or cause to be paid, to the said Joshua Fielden, John Fielden, James Fielden, Daniel Campbell, and William C. Pickersgill, or to their legal
233 representatives, such costs as may be awarded to them in the said court of chancery, in the said suit in which the said injunction shall issue, then and in that case the above obligation to be void, otherwise to be and remain in full force and virtue.

"L. A. LAHENS. [L. S.]
"JOHN LAFARGE. [L. S.]

"Sealed and delivered in the presence of, in the 10th line, 1st page, the words "seventy-six" being erased, and the word five substituted.

FRAS. DANINICK.

"CITY AND COUNTY OF NEW YORK, *ss.:*

"On the twenty-fourth day of April, one thousand eight hundred and forty-six, before me came Francis Dominick, known to me to be the same person who is the subscribing witness to the above instrument, and the said Francis Dominick, being by me duly sworn, did depose and say, that he resides in the city of New York, and that in his presence Louis E. Lahens and John La Farge, known to him to be the same persons described in and who executed the said instrument, did duly sign their names thereto, and did duly acknowledge that they executed the same, and that he, the deponent, subscribed his name as a witness thereto.

(S'd) "JOSEPH STRONG,
"*Commissioner of Deeds.*

234 (Endorsed:) "I approve of the form and manner of execution of the within bond, and of the sufficiency of the surety therein, his justification being waived by the consent annexed.

"April 25, 1846.

"WM T. McCONN, *V. C.*

"In chancery, before the vice-chancellor.

"PIERRE F. LAHENS ET AL.
vs.
"JOSHUA FIELDEN ET AL.

"I hereby waive the justification of John La Farge on the bond given in this cause and dated yesterday.

"New York, April 24, 1846.

"F. GRIFFIN, *Deft's Sol'r.*

"Filed April 25, 1846."

Which bond was duly executed by the said Louis Emile Lahens and John Lafarge, the latter having since deceased, and alleging that the said John Brinsse and Louisa Jones are respectively executor and executrix of the last will and testament of the said John Lafarge, and also alleging that the said William C. Pickersgill & Co. duly recovered a judgment in the action, the prosecution of which was stayed by the said injunction, and that afterwards, upon execution thereon being returned unsatisfied, they duly demanded payment thereof of the said
235 John Binsse and Louisa Jones, executor and executrix of the said John Lafarge, and of the said Louis Emile Lahens, who refused to pay the same, or any part thereof, and also alleging the insolvency of the said Louis Emile Lahens, and praying for a decree that the sum due upon the said bond might be deemed a proper charge against the estate of the said John Lafarge, in favor of the orator, and that the said Louisa Jones, executrix, and the said John Binnsse, executor, might be required by a proper judgment and decree to pay to the orators the amount of said bond, with interest thereon from the seventeenth day of April, 1868, out of the assets belonging to the estate of the said John Lafarge, deceased, and that the orators might have such other and further relief as might be agreeable to equity and conscience.

And that the said defendants demurred to the said bill of complaint, and that afterwards the said cause came on for a hearing in the said circuit court upon the said bill of complaint, and the demurrers thereto of the said several defendants, and such proceedings were had in the said cause, that on the twenty-second day of September, one thousand eight hundred and sixty-nine, the following decree was made and pronounced therein by the said circuit court in the following words:

236 "At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall in the city of New York, on the 22d day of September, in the year of our Lord one thousand eight hundred and sixty-nine,

"Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

THOMAS FIELDEN AND WILLIAM C. PICKERSGILL
vs.
LOUIS EMILE LAHENS, AND JOHN BINSSE, executor, & Louisa Jones, executrix, &c., of John Lafarge, deceas'd.

"An order having heretofore been made in this cause, dated on the fourth day of August, 1869, sustaining the demurrer of the defendants to the bill of complaint of the complainants, with liberty to the com-

plainants to amend their bill of complaint within thirty days, and said complainant having elected not to amend the same, on motion of the
237 solicitors for the defendants, it is ordered, adjudged, and decreed that this court, by virtue of the power and authority therein vested, doth order, adjudge, and decree that the demurrers of the defendants to the bill of complaint be, and they are hereby sustained, and that the bill of complaint of the complainants above named be, and the same is hereby, dismissed, and that the defendant Louis Emile Lahens recover of the complainants Thomas Fielden and William C. Pickersgill the sum of twenty-one $\frac{19}{100}$ dollars for his costs and disbursements herein, as taxed by the clerk of this court; and that the defendants John Binsse and Louisa Jones, executor and executrix, &c., of John La Farge, deceased, do recover of the complainants Thomas Fielden and William C. Pickersgill, the sum of one hundred and thirty-two dollars and thirty-one cents for their costs and disbursements herein, as taxed by the clerk of this court, and that they have execution therefor."

Which said decree of the said circuit court is, as this appellant is advised, erroneous, and ought to be reversed.

The petitioner further shows that since the rendition of the said judgment, Thomas Fielden, one of the plaintiffs, has deceased, and this petition is brought by the petitioner as surviving plaintiff.

Wherefore, your petitioner appeals from the whole of the said decree of the said circuit court to the Supreme Court of the United States,
238 and respectfully prays that the said decree of the said circuit court, and the bill of complaint, demurrers, and proceedings in the said cause may be sent to the Supreme Court of the United States, without delay, and that said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court, and every part thereof may be reversed, and a decree made overruling the said demurrers and each of them, with costs, or such other decree as to the said court shall seem just.

BARLOW, LAROCQUE & MACFARLAND,
Solicitors for Petitioner.

(Endorsed:) U. S. circuit court. Thomas Fielden another against Louis Emile Lahens & others. Petition of appeal. Barlow, Larocque & Macfarland, sol'rs for pl'ffs. Filed July 22, 1870.

239 Circuit court of the United States for the southern district of New York.

THOMAS FIELDEN AND WILLIAM C. PICKERSGILL
against
LOUIS EMILE LAHENS AND JOHN BINSSE, EXECUTOR, and Louisa Jones, executrix, of John Lafarge, deceased.

Know all men by these presents, that we, William C. Pickersgill, John R. Gardner, and William Fellowes, are held and firmly bound unto Louis Emile Lahens and unto John Binsse, executor, and Louisa Jones, executrix, of John Lafarge, deceased, in the sum of five hundred dollars, to be paid to the said Louis Emile Lahens, his executors, administrators, or assigns, and to John Binsse, executor, and Louisa Jones, executrix, of John Lafarge, deceased, or their successors, for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated the thirtieth day of June, one thousand eight hundred and seventy.

Whereas the above-named William C. Pickersgill, as surviving plaintiff in the above-entitled action, the said Thomas Fielden having deceased since judgment therein rendered, has prosecuted an appeal to
240 the Supreme Court of the United States out of this court to reverse the judgment and decree rendered in the above-entitled action, and entered with the clerk of this court on the twenty-second day of September, one thousand eight hundred and sixty-nine, by which decree it was adjudged that the bill of complaint of the said Thomas Fielden and William C. Pickersgill be dismissed, and that the defendant, Louis Emile Lahens, do recover of the complainants the sum of twenty dollars and nineteen cents for his costs and disbursements, and that the defendants John Binsse, the executor, Louisa Jones, the executrix, of John Lafarge, deceased, do recover of the complainants the sum of one hundred and thirty-two dollars and thirty-one cents for their costs and disbursements.

Now, therefore, the condition of this obligation is such that if the above-named William C. Pickersgill, as surviving plaintiff, as aforesaid, shall prosecute his said appeal to effect, and shall pay all damages and costs, if the said decree shall be affirmed, then this obligation to be void, otherwise to remain in full force and virtue.

W. C. PICKERSGILL, [L. S.]
By his Attorney, J. R. Gardner.
J. R. GARDNER. [L. S.]
WM FELLOWES. [L. S.]

Signed, sealed, and acknowledged in the presence of—
EDWARD L. OWEN.

241 CITY AND COUNTY OF NEW YORK, *ss.:*

John R. Gardner, of said city, being duly sworn, doth depose and say that he resides in the State of New York, and is a householder and freeholder therein, and is worth the sum of five hundred dollars over and above all his liabilities, exclusive of property exempt from execution.

J. R. GARDNER.

Sworn before me this 30th day of June, 1870.

EDWARD L. OWEN,
U. S. Commissioner.

CITY AND COUNTY OF NEW YORK, *ss.:*

William Fellowes, of said city, being duly sworn, doth depose and say that he resides in the State of New York, and is a householder and freeholder therein, and is worth the sum of five hundred dollars over and above all his liabilities, exclusive of property exempt from execution.

WM FELLOWES.

Sworn before me this 30th day of June, 1870.

EDWARD L. OWEN,
U. S. Commissioner.

I, Samuel Blatchford, one of the judges of the circuit court of the United States for the second circuit, do hereby approve the form
242 of the preceding bond, the manner of its execution, and the sufficiency of the sureties therein named.

Dated New York, 21st July, 1870.

SAM'L BLATCHFORD.

(Endorsed:) U. S. circuit court, southern district of New York. Thomas Fielden and another against Louis Emile Lahens and others.

Bond on appeal. Bowdoin Larocque & Barlow, sol'rs for appellants. Filed July 22, 1870.

243 By the Honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, second circuit.

To Louis Emile Lahens and John Binsse, executor, and Louisa Jones, executrix, of John Lafarge, deceased.

Whereas William C. Pickersgill, as surviving plaintiff in a suit wherein Thomas Fielden, since the decree therein rendered deceased, and the said William C. Pickersgill were plaintiffs, and you were defendants, has lately appealed to the Supreme Court of the United States, from a decree rendered by the circuit court of the United States, for the southern district of New York, second circuit, in said suit, dismissing the bill of complaint of the said Thomas Fielden and William C. Pickersgill, with costs to the defendants:

And whereas, the said William C. Pickersgill, as surviving plaintiff as aforesaid, has filed the security required by law upon his said appeal:

You are therefore cited to appear before the Supreme Court of the United States, on the first Monday of December, 1870, and show cause, if any there be, why the decree named in the aforesaid appeal should not be corrected, and speedy justice should not be done to the
244 parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the City of New York, this twenty-second day of July, in the year one thousand eight hundred and

SAM'L BLATCHFORD, *D. J.*

(Endorsed:) U. S. circuit court, southern district of New York. Thomas Fielden and another against Louis Emile Lahens and others. Citation. Barlow, Larocque & Macfarland, solicitors for appellants.

Due service of a copy of the within citation is hereby admitted. N. Y., 13 Aug't, 1870.

T. J. GLOVER,
Sol'r for John Binsse, & Louisa Jones as exec'x of Jno. La Farge, dec'd.
F. H. DYKERS,
Sol'r for L. E. Lahens.

Filed July 22, 1870.

245 UNITED STATES OF AMERICA,
Southern District of New York, ss.:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 350 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Thomas Fielden et als., plaintiffs, against Louis Emile Lahens & als., defendants, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New

York, in the second circuit, this 9th day of Dec'r, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the said United States, the ninety-fifth.

[SEAL.] KENNETH G. WHITE,
Clerk.

(Indorsement on cover:) S. New York, C. C. U. S.—No. 402. William C. Pickersgill, appellant, *vs.* Louis Emili Lahens, John Binsse, ex'or, and Louisa Jones, ex'tx, of John Lafarge, dec'd. Filed 14th December, 1870.

REC. 402—9

SUPREME COURT

OF THE UNITED STATES.

THOMAS FIELDEN and W. C. PICKERSGILL, Complainants and Appellants,

vs.

LOUIS EMILE LAHENS and others, Defendants and Respondents.

This bill is filed on an injunction bond against Louis Emile Lahens and the representatives of John La Farge.

The action at law to stay the trial, of which the bond in suit was given, was commenced in the Superior Court of the City of New-York, on the 21st of October, 1844, against the defendants in that action, as alleged endorsers of three promissory notes, all dated May 25th, 1844, two of them payable at ninety days, and one at sixty days from date, one for $14,000, one for $13,500, and the third for $21,221 43, amounting in all to $48,721 43.

The defendants originally all appeared by the same attorney, and filed a joint plea of the general issue, with notice of special matter, on the 19th day of November, 1844

This action was continued in court, and various proceedings therein were from time to time had; and on

the 2d day of June, 1858, an order of the Superior Court was entered, substituting T. J. Glover as attorney for Pierre Francois Lahens and Edward Ernest Lahens, (Mr. Gaudard, one of the defendants, having in the meantime died,) in the place and stead of Mr. Van Wagenen, who, down to this time, had appeared as attorney for all the defendants, and leave was also given in the order to P. F. and E. E. Lahens to file, within five days, a separate plea of the general issue, which they did.

This cause was afterwards tried before referees, and the plaintiffs having on the trial proved a right of action against Louis Emile Lahens, but having failed to prove a right of action against P. F. and E. E. Lahens, the plaintiffs were nonsuited as to all the defendants.

An appeal was taken from this judgment to the Court of Appeals, where the judgment below was reversed as to Louis Emile Lahens, but sustained as to the other two defendants, and the cause re-instated in the Superior Court, wherein final judgment was recovered against Louis Emile Lahens, on the 17th day of April, 1868, for the sum of $129,429 52.

This decision was made on the ground, that the act of 1851 applied the rules of practice prescribed by the Code to pending suits.

The court disposed of the objection, that it would be unjust to the defendant to give this construction to the act, which would in effect take away the defendant's right to costs, and deprive him of a perfect defence to the action, by saying that the defence was merely technical, and that the advantage which the defendant had under the old rule was a mere adventitious one, dependent upon a then existing rule of practice—a mere formal proceeding—a mode of arriving at a result—the judgment, which the plaintiffs have shown themselves entitled to.

See opinion of Court of Appeals.

On the 25th day of July, 1844, a few months before the commencement of the before-mentioned action at

law, the same persons who were subsequently made defendants in the action at law, filed a bill in the Court of Chancery against the plaintiffs in that action, praying for relief against the promissory notes before referred to. Afterwards, on the 20th of April, 1846, and after issue had been joined in the action at law, application was made in the suit in Chancery for an injunction to stay the trial of the action at law. Upon this application an injunction was ordered to issue, on filing the bond on which the present suit is founded.

First Point.

One of the main points ruled upon on the argument of the demurrer in the Circuit Court was this: It was said that at the time the action at law was commenced, the prosecution of which was staid by the bond in question, no recovery could have been had in the action, except against all of the defendants, and that, if the plaintiffs failed to maintain their right to recover against all of the defendants, they entirely failed in the action. And it was argued that, as the law which gave the right to recover against one or more of the defendants in an action was enacted while this action was pending, the law did not, and could not, according to settled legal principles, apply to it.

This point was presented to the Court of Appeals, on an appeal from the judgment of the Superior Court, and was overruled. A copy of the opinion is annexed to this brief.

This decision is not necessarily binding upon this court, but upon all the authorities it is clear that the point is not well taken. The bond is given conditioned to pay any judgment that might be recovered *in the action;* whether that judgment should be recovered against one or all of the defendants, was partly dependent on the merits of the case, as made out, and partly upon the *rules and practice of the court;* but whether against one or against all, it was all the same a judgment in the action, and a

delay in prosecuting it, or in issuing execution on the judgment, might be as fatal in the one case as the other. According to the practice of the court at the time the bond was given, the same result might have been accomplished by an amendment. In fact, such an amendment had been allowed in this case, but after the enactment of the Code of Procedure it was not deemed necessary.

Hartness *vs.* Thompson, 5 *Johns.* 160.
Judson *vs.* Gibbons, 5 *Wend.* 224.
Woodard *vs.* Newhall, 1 *Pickering*, 500.
Miner *vs.* Mechanics' Bank of Alexandria, 1 *Peters' S. C. R.* 46.
Graham's. Pr. 609, at foot.
Robertson *vs.* Smith, 18 *Johns.* 477.
Mitchell *vs.* Osborne, 2 *Hill*, 520.
10 *Pick.* 281.
Tuttle *vs.* Cooper, 10 *Pick.* 290.
Niles *vs.* Drake, 17 *Pick.* 516.

The prohibition against laws impairing the obligation of contracts has never been understood to embrace laws that relate merely to the remedy for their enforcement.

And certainly the most limited definition of this term would include modifications of practice, to which the question manifestly belongs, whether a plaintiff, who fails to establish a cause of action against all the defendants, but does establish his right to recover against one or more, shall have a judgment in the action, or be compelled to bring a new suit, merely because of his failure to sustain the action against all.

Bronson *vs.* Kinzie, 1 *How. U. S. R.* 315.
Little *vs.* Gibson, 39 *N. H.* 505.
Inbusch *vs.* Farwell, 1 *Black*, 566.
Heynemann *vs.* Eder, 17 *Cal.* 433.
U. S. *vs.* Four Pieces of Woolen Cloth, 1 *Paine C.C.* 435.
Sturgis *vs.* Crowninshield, 4 *Wheat.* 200.
Mason *vs.* Haile, 12 *Wheat.* 378.

Jackson *vs.* Lamphire, 3 *Pet.* 280.
Patin *vs.* Pressan, 7 *Lou.* 301.
Butler *vs.* Palmer, 1 *Hill*, 325.
McClurg *vs.* Kingsland, 1 *How.* 202.
Bronson *vs.* Kinzie, *Ibid.* 315.
Gordon *vs.* South Fork Canal Co. 1 *McAllister*, 513.
Bank of U. S. *vs.* Longworth, 1 *McLean*, 35.
U. S. *vs.* Conway, 1 *Hemp.* 313.

Second Point.

The important and controlling question in this case grows out of the relation of John La Farge to the bond in question. This bond is a statutory obligation, and was given in pursuance of a statute of the following tenor:

"No injunction shall be issued to stay the trial of any "personal action at issue in any court of law until the "party applying therefor shall execute a bond, with one "or more sufficient sureties, to the plaintiff in such action "at law, in such sum as the Chancellor or Master allowing "the injunction shall direct, conditioned for the payment "to the said plaintiff, and his legal representatives, of all "moneys which may be recovered by such plaintiff or "his legal representatives, or the collection of which "may be stayed by such injunction in such action "at law, for debt or damage, and for costs therein, "and also for the payment of such costs as may be "awarded to them in the Court of Chancery, in the suit "in which such injunction shall be issued."

Mr. La Farge was not a party to the action, and as far as appears was not personally interested therein. The other obligor, Louis Emile Lahens, was one of the defendants.

If the fact that Mr. La Farge is not shown to have had any direct pecuniary interest in the subject matter of the action at law, or to have derived any personal benefit from the giving of the bond in question, is sufficient to bring the case within the decision under the U. S. *against* Price, 9 *Howard*, 55, the demurrer must be

sustained. But we contend that this case stands upon a different principle, and that in legal intendment both the obligors are to be regarded as principals, so far as the rights of the plaintiffs are concerned. In the case of statutory obligations of this character, it is the intention of the law and not the intention of the party, that ought to control. The law requires the bond to be given for the protection and indemnity of the parties, against whom the relief is sought, and whose rights are imperilled by its being granted, and the law requires that sureties shall be given for the better security of the plaintiff. It is not a question of contract. The plaintiff has no election to accept or refuse to accept the bond. The only right he has in the premises, is to require that the sureties shall justify as required by the statute. The plaintiff had no right to say that the bonds should be a joint and several obligation, nor had the court the right to say that the obligation should be a joint and several one. The language of the statute is, the party applying therefor shall execute a bond with one or more sufficient sureties. When the law requires a bond to be given, and does not employ words of severalty, the fair intendment is, if not the necessary intendment, that a joint obligation in form is intended, but it does not follow in such case that the law intends or contemplates that the accident of the death of the sureties shall deprive the obligees of the security which the bond was intended to afford.

The intention of the law was, that the property of the principal and of the surety should stand charged with the liability assumed in favor of the plaintiffs, and so the law should be construed.

W. W. MACFARLAND,
of Counsel.

29

IN THE COURT OF APPEALS,

STATE OF NEW YORK.

GETTY vs. BINSSE.

OPINION OF COURT,

PECKHAM, J.

IN COURT OF APPEALS.

IN COURT OF APPEALS.

ANDREW C. GETTY, *Trustee, &c.*,
RESPONDENT,
vs.
JOHN BINSSE, *et. al., Executors of Jno. LaFarge,*
APPELLANTS.

Argued
April 22, 1872.

Appeal by defendants from the judgment entered upon the verdict at the Circuit, of some $20,000, and affirmed by the General Term of the First Department of the Supreme Court.

FR. KERNAN, *for Appellants,*
J. C. CARTER, *opposed.*

PECKHAM, J.—No question is made as to the pleadings,—whether this is a suit at law or in equity,—therefore none is considered. I proceed, therefore, directly to the merits. The testator, LaFarge, signed a joint note with one Lahens, for $15,000, at a year from date, and dated February 4th, 1858. He was a surety on the note. Tne note was not paid, and after the decease of LaFarge, the surety, (Lahens, the joint maker, surviving him,) this suit was commenced against his representatives to recover upon the note. The testator was under no liability to the plaintiff, legal or equitable, irrespective of or prior to the making of this note. Lahens had been and was a surety for one Hoguet for money he (Hoguet)

had received as trustee, and this note was given to secure the balance due from Hoguet. The question is, are the representatives of LaFarge liable thereon?

It is a well settled principle that in case of a joint obligation, if one of the obligors die, his representatives are at law discharged and the survivors alone can be sued.

Tower vs. Moor, (2 Vern. 98.)
Simpson vs. Vaughan, (2 At. 31.)
Bradley vs. Burwell, (3 Don. 61.)
Richler vs. Poppenhauser, (42 N. Y., 373.)

It seems to be equally well settled that if the joint obligor so dying be a surety, not liable for the debt irrespective of the joint obligation, his estate is absolutely discharged both at law and in equity, the survivor only being liable. In such case, where the surety owed no debt outside and irrespective of the joint obligation, the contract is the measure and the limit of his obligation. He signs a joint contract and incurs a joint liability and no other. Dying prior to his co-maker the liability all attaches to the survivor.

Simpson vs. Field, (2 Cas. in Chy., 22,) a case in some respects like the one at bar, and decided in 1679: The Chancellor held the surety discharged as he was not "bound by law."

In *Sumner vs. Powell*, (2 Merivale, 30,) Sir William Grant, Master of the Rolls, said, "It has never been determined that every joint covenant is in equity to be considered as the several covenant of each of the covenanters." He says he had occasion to examine and found no such general proposition anywhere laid down: "when the obligation exists only by virtue of the covenant, its extent can be measured only by the words in which it is conceived." This judgment was sustained on appeal after full consideration by Lord Chancellor Eldon, (1 Tur. & Russ, 423.) Story lays down the same doctrine, (Story's Eq. Juris. §162, 3 and 4, and cases there cited.)

In *Harrison vs. Field*, (2 Wash. Va. Ct. of Appeals, 136,) the Court held the estate of a surety discharged; as it was discharged at law it could not be held in equity.

In *Othee vs. Ireson*, (3 Drew Ch. R., 177,) where a check was given signed by three persons, one of them a surety, as in the case at bar, and the money was advanced upon his credit, upon the death of the surety his co-signers surviving: *Held* that his estate was absolutely discharged.

To the same effect is *Richardson vs. Horton*, (2 Beav. 185,) *U. S. v. Rice*, (9 How. U. S., 92.) This was a case of a joint and several bond. But judgment had been recovered against all as joint debtors, and then the surety died, and it was held that plaintiffs could not proceed in equity against his estate. They had elected to hold them as joint debtors, and the surety's estate could not be made liable severally after a joint judgment. There is a dissenting opinion by Justice Woodbury, but no difference as to this principle.

Jones vs. Beach, (2 DeGex. Mac. & Gord. 886,) is directly in point. There the claim was upon a joint promissory note, and the surety dying his estate was held discharged both at law and in equity.

Wilmer vs. Currey, (2 DeGex. & S. 347,) went still further, and held representatives of deceased not liable on a joint bond, though the joint obligors had been partners with the obligee, and the bond was given on the dissolution of the firm. The Vice Chancellor held that the liability of the representatives was different under the deed from what it was before. Representatives therefore not liable under the deed, but party remitted to his remedy for liability prior to the joint deed.

See *Carpenter vs. Provoost*, (2 Sand. Sup. Ct. R. 537.) The Court in an opinion by Mr. Justice Campbell, decided the principle of non-liability of a surety's representatives either at law or in equity upon a joint obligation.

The same principle is recognized in *Bradley vs. Burwell*, (3 Denio,) by Mr. Justice Jewett. There are many other cases holding the same rule.

Thorpe vs. Jackson, (2 Young & Coll. Exr. in Eq. 553,) is in entire accord as to the point here involved.

If there had been fraud or mistake as to the note, if clearly proved that the real contract intended to be signed was joint and several and not joint merely, then Equity could and would correct that as it would any other mistake. All the cases agree to this, none is pretended in the case at bar.

It is claimed that the promise of the testator prior to the making of this note, that he would promptly pay it at maturity, made it a several obligation. There are two plain answers:

1. That promise was merged in the note.

2. The note promised the same, jointly with Lahens. There is no pretence that he ever promised to sign any other paper.

The basis or principle upon which joint obligations have been held in the books to be also several in equity, is that the debt secured was owed irrespective of the joint obligation—that all were principal debtors and they must be held to have intended a several as well as a joint liability. That rule has never been applied to a surety. His obligation is the measure of his liability.

But the rule as to principals has been modified, as above stated in the later English cases.

Judgment reversed, and a new trial granted. Costs to abide event.

GROVE & BAILEY, Law Printers, 113 Genesee St., Utica.

United States Supreme Court.

SUPREME COURT OF THE UNITED STATES.

WILLIAM C. PICKERSGILL, Survivor, &c., *Appellant*,

vs.

LOUIS EMILE LAHENS, and JOHN BINNSSE and LOUISA JONES, Executor and Executrix of JOHN LAFARGE, deceased, *Respondents*.

Statement, Points and Brief for Respondents.

Appeal by the plaintiff from a decree made by the Circuit Court of the United States for the Southern District of New York, dismissing the complainant's bill of complaint, with costs to the defendants. (Decree, fol. 227, 228; Petition of Appeal, 229 to 239.)

The suit was in equity by Thomas Fielden and William C. Pickersgill, survivors of the firm of William C. Pickersgill & Co., who were subjects of the Queen of Great Britain, against Louis E. Lahens, and Louisa Jones, Executrix, and John Binnsse, Executor of John LaFarge, deceased. The Bill of Complaint was filed in September, 1868.

The suit was upon a *joint* bond executed by Louis E. Lahens and LaFarge in 1846, which is set out in the Bill of Complaint. (11.)

LaFarge died in 1858, leaving Louis E. Lahens him surviving; and Mrs. Jones and Binnsse were then appointed the executrix and executor of his will. (Bill, 21.)

A remedy is sought in equity against the estate of LaFarge, on the ground that Lahens, the surviving obligor, is insolvent. (Bill, 20.)

The defendants demurred to the Bill of Complaint. (Demur of Lahens, fol. 209, &c.; do. of the Executor and Executrix, fol. 214, &c.) The demurrers were sustained. (221.) After the decree dismissing the complaint, the plaintiff, Fielden, died, and the appeal is prosecuted by Pickersgill, as survivor. (229, 237.)

From the Bill of Complaint and papers annexed as a part thereof, the following facts appear:

In May, 1844, Thomas Fielden, Daniel Campbell, Joshua, John and James Fielden, and William C. Pickersgill, were co-partners, doing business in the city of New York, under the name of W. C. Pickersgill & Company. They at the same time carried on business at Liverpool, England, under the firm name of Fielden Brothers & Company. (Bill, fol. 5.)

During May, 1844, and prior thereto, Louis Emile Lahens, Pierre F. Lahens, Augustin Edward Gaudard and Edward Ernest Lahens, were co-partners, doing business as commission merchants, both at Havre, France, and in the city of New York, under the firm name of J. Lahens & Company. (Bill, fol. 7.)

May 25, 1844, one Caselli, at the city of New York, made his three promissory notes dated that day, the one payable in sixty and the other two in ninety days from date, and the three being for the sum of $48,721.43. These notes were, by their terms, payable to the order of J. Lahens & Company. "Caselli procured all of said notes to be endorsed by *the said Louis Emile Lahens, in and by the firm name of J. Lahens & Company; and subsequently and before maturity, the said Caselli delivered the said notes so endorsed to the said firm of Wm. C. Pickersgill & Co.*" (Bill, fol. 7.)

In October, 1844, the persons composing the firm of Wm. C. Pickersgill & Co., commenced in the Superior Court of the city of New York, *an action of assumpsit* against the

persons constituting the firm of J. Lahens & Co., above named, to recover of them as endorsers the amount of said three notes. (Bill, fol. 9; Declaration in said action, fol. 36, &c.)

The four defendants in the action at law appeared therein and interposed the plea of non-assumpsit, with a notice of special matter. This was in November, 1844. (Bill, 9; Plea, &c., fol. 43.) Subsequently the defendants other than Louis E. Lahens were allowed to and did interpose separately the plea of non-assumpsit. (Fol. 53, 54.)

While this action at law was pending, and in April, 1846, the defendants therein, who will be designated herein as J. Lahens & Co., applied to the Court of Chancery of the State of New York, in a suit which they had instituted in that Court against the persons constituting the firm of Pickersgill & Co. for relief against said endorsements, for an injunction to stay the trial of said action at law; and the Court of Chancery thereupon granted a temporary injunction staying the trial of said action at law until the answers of the defendants in said Chancery suit, to certain exceptions taken by the complainants therein to the previous answers of the defendants therein, were perfected, upon the execution and filing of the bond set out in the Bill of Complaint herein. (Bill, 8, 10 to 15; Order for Injunction, 194 to 196.)

The bond is the *joint* bond of Louise Emile Lahens and John LaFarge, is dated April 23, 1846, and is in the penal sum of $60,000. (Bill, 11.)

The aforesaid action at law against the persons constituting the firm of J. Lahens & Co., is recited in the bond, and also the suit in Chancery instituted by the latter, and the order for the injunction. (Bill, fol. 12.)

The condition of the bond in substance is, that the obligors therein shall pay all moneys which may be recovered, or the collection of which may be stayed by such injunction, in the aforesaid action at law in the Superior Court of the City of New York, for debt or damages and for costs therein. (Bill, fol. 13.)

The injunction thus granted remained in force until about the 18th of December, 1847, when the said answers to said exceptions in the suit in Chancery were perfected. It stayed the trial of the action at law from April, 1846, until December, 1847. (Bill, 16.) The suit in Chancery was subsequently dismissed for want of prosecution. (Bill, 16.)

In 1854, the action at law was, on the stipulation of the attorneys of the respective parties, referred by an order of the Superior Court to three referees to hear and determine the same. (Fol. 17, 48 and 49.)

The trial of this action was not commenced until 1858. (Fol. 62½.) The proceedings before the referees appear from folio 62½ to folio 151.)

The referees made their decision in December, 1860. (Folios 152 to 153½.)

They find that Louis Emile Lahens was the only member of the firm of J. Lahens & Co. residing within the United States; that he endorsed the said firm name upon the said three notes in the city of New York, without consideration and for the accommodation of Caselli, the maker of the same; that Caselli delivered them to Pickersgill & Co., who had notice that such endorsements were without consideration to the firm of J. Lahens & Co., and for the accommodation of Caselli, the maker, and that a joint liability of the defendants in the action was not established. As a conclusion of law, the referees held that the plaintiffs in the action, having failed to prove a joint liability of all the defendants, could not recover therein; and they ordered judgment of non-suit therein, with costs to the defendants. (152, 153.)

Judgment was entered in 1861, upon the decision of the referees, in favor of the defendants, in the action at law. (Fols. 17, 61, 62.)

Upon an appeal to the General Term of the Superior Court from this judgment, the same was affirmed. (17, 157. 158, 159.)

The opinion of the Court on affirming the judgment is at folio 162, &c., of the record.

An appeal was taken from this judgment to the Court of Appeals of the State of New York, and the cause was heard and decided in that Court in 1867. The Court of Appeals affirmed the judgment in favor of the defendants, other than Louis Emile Lahens, with costs of the appeal. The judgment in favor of Louis Emile Lahens was reversed, and a new trial ordered as to him. (17, 167 to 170.)

According to the law of New York, as it existed when the action at law was commenced, and when the bond in question in this suit was executed, there could be no recovery in the action at law without establishing the original liability of all of the defendants therein. This was the settled law of New York, until the Legislature enacted the statute known as the "Code of Procedure," in 1848. (Laws of New York of 1848, p. 540, § 230; Opinion of Superior Court, fol. 161, &c.)

But the Court of Appeals decided on the appeal above mentioned, that the "Code of Procedure" altered this rule of law, and that by an act of the Legislature, passed in 1851, amending the "Code of Procedure," the same was made applicable to suits commenced before the Code was enacted. (Laws of New York for 1851, p. 143, § 458.) Upon this ground it was decided that a judgment against Louis Emile Lahens alone could be recovered in the action at law. This decision was made in 1867, more than 23 years after the action at law was commenced, and over 20 years after the bond in question in the suit at bar had been executed. (3 Transcript of Appeals, N. Y., p. 218, Fielden v. Lahens.)

In accordance with the decision of the Court of Appeals, in October, 1867, final judgment was rendered in the Superior Court against the plaintiffs in the action at law, and in favor of the defendants other than Louis E. Lahens, and a new trial was ordered as to the latter. (Fol. 17, 172 to 175.)

The action as against Louis E. Lahens alone was re-tried and a judgment rendered against him for $129,429.52, in April, 1868. (18, 19, 175 to 190.)

Upon this judgment execution was issued against Louis

E. Lahens in July, 1868, and returned unsatisfied. (Bill, 19, 20.)

In April, 1868, when this judgment was recovered against him, Louis E. Lahens had become insolvent. (Bill, 20.)

John LaFarge, the surety on the injunction bond in question, died in June, 1858. He left a last will, which was proved; and his widow, Louisa LaFarge, now Louisa Jones, and John Binnsse, the defendants herein, were appointed his executrix and executor and accepted the trust. (Bill, 21.)

The Bill alleges that the executor and executrix should out of the estate pay the amount of the Injunction Bond, with interest from the recovery of the judgment against Louis E. Lahens. (Bill, 22, 23.)

But inasmuch as the complainants have no remedy at law, they pray that they may have this relief in a Court of Equity. (Bill, 24.)

It appears by the record that of the original six plaintiffs in the action at law, four, namely, Joshua, John and James Fielden and Daniel Campbell, died during the pendency of the action at law, and before the recovery of the judgment in 1868. During the same time one of the four original defendants, viz: Gaudard, died. (187.)

The grounds of demurrer stated by the executor and executrix are found at folios 214 to 217.

The grounds stated by Lahens are at folios 209 to 212.

POINTS.

First. The bond *not being several*, and being *joint only*, the plaintiffs cannot recover thereon against LaFarge's executors.

I. The right of action at law against LaFarge's estate was extinguished by his death in 1858, in the life-time of his co-obligor.

1. This has long been settled law.

   A. D. 1869, *Towers v. Moore*, 2 *Vern.*, 99.
   1 *Equity Cas. Ab.*, 93, *K. pl.* 1.
   1739, *Per Ld. Hardwick*, *Simpson v. Vaughan*, 2 *Atk.*, 32.

2. The plaintiffs themselves allege this rule of law, and base this bill in equity upon it. Otherwise, their remedy would be at law; and the bill should be dismissed on that ground, for want of jurisdiction.

   Thompson v. Railroad Companies, 6 *Wallace*, 134, 137–8.
   U. S. v. Price, 9 *Howard*, 93, *per curiam*.

II. In the case at bar, a Court of Equity will not enforce the bond against the estate of LaFarge in the hands of his executors.

1. When a security or assurance such as a joint bond or promissory note is given by way of ensuring to a party his just dues upon some dealing had between him and the obligors or promissors, and some subsequent event, such as death, extinguishes or impedes the right of action at law, equity under the head of relief against accident will supply a remedy. In so doing, equity acts on the ground that payment of the money due upon the dealing had is a moral duty and is binding in conscience. The instrument of assurance is regarded as a mere incident and as not being the substance of the transaction.

   Richardson v. Horton, 6 *Beavan*, 185, 186.
   Carpenter v. Provost, 2 *Sandford's Superior Court Reports* (*N. Y.*), *p.* 537 *and cases cited*.
   Hunt v. Rousmanier, 8 *Wheaton*, 212, 213, 214, *per Marshall, C. J.*
   Sumner v. Powell, 2 *Merivale*, 35–36.

2. But when, as to the party whose liability is in question, his entering into the bond or promissory note exhibits his whole connection with the obligee or promissee, and there does not appear on his part any concern or interest in the antecedent transaction, equity will not afford relief against his estate. In such a case Equity will not supplement or in any way extend or add to the liability of himself or his estate.

In the language of Sir Wm. Grant, in *Sumner v. Powell*, (2 *Merivale*, 36,) "When the obligation exists only by virtue of the covenant, its extent can be measured only by the words in which it is conceived." This qualification or distinction is firmly established.

See cases Supra.
Simpson v. Field, 2 *Chan. Cases*, 22.
Sumner v. Powell, 2 *Merivale*, 29.
Story's Equity Jur., §§ 162, 163, 164.
Weaver v. Shyrock, 6 *Sergt. & Rawle*, 262.
U. S. v. Price, 9 *Howard*, 83, 92.
Hunt v. Rousmainer, *per Marshall, Ch. J.*, 8 *Wheaton*, 212, 213.
Hunt v. Rousmainer, 1 *Peters*, 16.
Pecker v. Julius, 2 *P. A. Brown's Pa. R.*, 33, 34.
Harrison v. Minge, 2 *Wash. Va. R.*, 136.
Kenedy v. Carpenter, 2 *Wharton*, 361.
Other v. Iveson, 3 *Drewry*, 177.
Jones v. Beach, 2 *DeGex, McN. & Gordon*, 886.
Wilmer v. Currey, 2 *DeGex & Smales*, 347.
Waters v. Riley, 2 *Harris & Gill*, 311.
Dorsey v. Dorsey's Exrs., 2 *Harris & Johns.*, 480, *Note.*
Bradley v. Burwell, 3 *Denio, N. Y.*, 65.
Mr. Cooper's Note to Justinian's Institutes, p. 462 *and cases there cited.*

III. The instances in which this distinction has been acted upon, and in which it is illustrated, are generally cases

of suretyships; but it is not confined to such cases; it has the broader foundation stated in the preceding division II.

Per Sir Wm. Grant, Sumner v. Powell, 2 *Merv.* 30.
Per Ld. Eldon on Appeal, S. C., 1 *Turner & Russell*, 423.
Wilmer v. Currie, 3 *DeGex & Smales*, 352.

IV. The present, however, is a case of suretyship, as appears on the face of the bill. (2 *Wash. Va. R.*, 140.) And in 9 *Howard, p.* 94, the Court thus cites a note of *Mr. Pitman* in his work on *Principal and Surety, p.* 92: "No case can be found in the books, says a learned writer, where equity has varied the legal effect of the instrument so as to charge the surety." The Court then adds, "To give a remedy against the estate of a surety after it is discharged at law, * * would be varying the effect of his contract in a most material point." (*See Story's Eq. Jur.*, § 164 *and cases cited.*)

The deceased, LaFarge, as appears by this bill of complaint, was a mere surety.

V. Some of the older cases afford color for the notion that equity in giving relief against the estate of a deceased joint obligor or promissor, went on the ground of presumed mistake in drawing the instrument. Such, however, is not the fact. Pre-existing debts of every kind, though secured by a joint obligation, are regarded in equity as several; and, consequently, when by the death of one of the debtors, the remedy against his estate is extinguished at law, equity will relieve the creditor. But whenever, as in the case of a surety in a joint obligation, there is no such pre-existing liability, the creditor cannot have relief in equity against the estate of the surety who has pre-deceased his principal and co-obligor, without averring and proving an *actual* mistake.

Story's Eq. Jur., § 164.
Wilkinson v. Henderson, 1 *Mylne & Keene*, 582.
Rawston v. Parr, 3 *Russell*, 539.
Jones v. Beach, 2 *DeGex, McN. & Gordon*, 886.
Other v. Ireson, 3 *Drewry*, 177.

Second Point. It is not material to consider the general justice or propriety or effect of the subsequent legislation, by which there was created a new and theretofore non-existing liability of Louis E. Lahens, the principal debtor, to be recovered against in the pending action at law. But natural justice, and the established rules of law regulating the construction, application and enforcement of contracts, forbid that such legislation should be permitted so to enlarge the scope, effect and intent of the bond as to render the surety liable for a debt or a result of the action at law which could not have been within the contemplation of any party to the bond at the time it was given.

I. When the bond was given, it had been for ages the firmly established law, that in an action upon an alleged joint assumpsit, the plaintiff could not succeed without establishing by confession or proof at the trial, that every one of the alleged co-promissors made the alleged joint promise.

Fielden v. Lahens, 9 *Bosworth*, 444.
Manice v. Miller, 6 *Hill*, 123.
DeForest v. Parsons, 2 *Hall's N. Y. Supr. C. R.*, 142.

1. So strong was this rule, that even in cases where, under the English practice, some of the defendants were outlawed, or under the New York practice some of them were returned not found, a recovery could not be had without proof of a joint promise.

Sangster v. Mazaredo & al., 1 *Starkie R.*, 161.
Halliday v. McDougal, 22 *Wendell*, 270.

In these cases, it was sufficient that the plaintiff gave adequate proof of the joint promise, to establish it as a fact against the appearing defendant; but it was not requisite that the evidence should be also such as would have been admissible against the non-appearing defendants in case they had appeared, and fully sufficient to fix a liability upon *them*.

This very qualification of the rule now asserted by the defendants is impressive evidence of its existence and force.

2. Where one of two, who were *in fact* co-promissors, was an infant, the promissee might recover against the adult co-promissor in a joint action against the two, *provided* the infant elected to avoid his liability by pleading infancy.

See Argt. of Shepherd & Best, Sergts., in Gibbs v. Merrell, 3 *Taunton*, 310.

Hartness v. Thompson, 5 *Johns.*, 160, 161.

It will be observed, however, that neither this special personal exemption nor the like exemptions of a discharge in bankruptcy or insolvency, would disprove the plaintiffs' allegation that there was *in fact* a joint promise which *as against the other defendant* was good *in law*.

II. This settled rule of law, applicable to the then pending suit, was known to all the parties to the bond: the bond was exacted, given and accepted with reference to it: the contract is to be construed with reference to it, and it controls and limits the obligation assumed by LaFarge, the surety. The substantial rules of law existing and applicable to a contract and its subject matter when it is executed, are a part of the contract.

U. S. v. Price, 9 *Howard*, 91, 94, *cur., per Greer, J.*

Story on Const., § 1385, *Bennett's Ed.*

1. It appears by the bill that the action at law was assumpsit against four parties on their alleged joint promise. (Bill, 7, 9.) This action is recited in the bond. (12.)

2. By the bond, LaFarge, in terms and legal effect, obligates himself *only* as to the "moneys which may be

recovered," or "the collection of which may be stayed by such injunction, in the *aforesaid action at law*." (Bond, set out in Bill, fol. 13.)

On the facts of the case, according to the well known and settled law as then and ever theretofore existing in New York, where the action was pending and the bond was executed, there could be no recovery in the "aforesaid action at law," no stay of the collection of moneys by the injunction, in the "aforesaid action at law," unless the four defendants therein were liable. There could not be a recovery on these facts against one defendant alone.

3. By the legal effect of his contract LaFarge became the surety of *all* the defendants in the action at law. If compelled to pay, he would have a remedy for indemnity against the four defendants in the action at law. He did not *intend to*, and he did not in fact or law, assume the hazard of being the surety of Louis E. Lahens *alone*.

III. The Legislature had no power to alter this ancient rule so as to create by such alteration a liability on the part of the surety. *Nelson, Ch. J., in Hamilton vs. Averill*, (11 *Wendell*, 625,) says:

"It is not competent to the Legislature to change the obligation to the prejudice of the surety."

See also *Vrooman v. Jones*, 5 *How., Pr. R.*, 369:

"The surety cannot be holden beyond the fair scope of his engagement as intended by the parties when undertaken * as expressed in the instrument, construed in the light of surrounding circumstances."

Rochester Bank v. Elwood, 21 *N. Y. R.*, 90.

1. The general power of the Legislature to alter rules of pleading, practice and evidence, so as to avoid multiplicity and circuity of actions and facilitate the attain-

ment of justice between the parties, need not be disputed. But it was a vital part of the surety's contract that the recovery which he agreed to abide and pay should be in the same action, and after the plaintiff had failed as to some of the defendants, it was no longer, in substance and fact, the same action, according to what must have been the parties' notion of identity at the time the bond was given.

Miller vs. Stewart, 9 *Wheaton*, 680.
U. S. v. Boyd, 15 *Peters*, 187, 208, 109.
Martin v. Thomas, 24 *Howard*, 315, 317.

2. The Legislative power to regulate pleading and practice must, *as it respects the interest of third persons*, be subject to some limit.

It might have been enacted that in pending suits as well as in suits thereafter to be commenced, infancy or coverture should not be a defense; that any cause of action accruing at any time before the trial should be provable as a ground of recovery; that the form of action should be wholly disregarded, and torts recovered upon in actions *ex contractu* or *vice versa*, and a multitude of similar *reforms* may be imagined.

Surely it would be a great perversion to say that sureties could be bound and affected by such changes, where, as in the present case, the risk assumed by them was essentially altered.

Third Point. It is firmly established that the hazards assumed by a surety shall not by any device be varied or extended a hair's breadth beyond the precise legal import and intent of his contract.

Smith vs. United States, 2 *Wallace's Rep.*, 234 *to* 237.

And it would be a singular exercise of equity powers to create a liability against LaFarge's executors in the face of two such defenses as are above stated. "Sureties," says *Spencer, J., in 2 Caine's Cases in Error*, 29, "are favorites of Courts of Equity, and those Courts will not bind them where they are not strictly bound at law."

See also 18 *N. Y. Rep.*, 276, *Yale vs. Deederer.*

I. There is no instance of a deviation from the direct import of his contract for the purpose of compelling a surety to do something different from its provisions, merely because it would be reasonable in case he was a principal.

II. If such a thing were attempted here, it would be hard to find a reasonable ground for charging LaFarge's executors.

According to the Bill, the whole effect of the injunction and bond was to stay a trial until December 18, 1847, (Bill, fol. 15,) when the injunction was dissolved.

Had a trial taken place during that period the plaintiffs must have failed in their action as to all the defendants. The Code did not relieve the plaintiffs from their inability to recover until it had been amended.

Its original enactment was on April 12th, 1848. (*See Laws of N. Y. for that year, p.* 497.

The Statute amending the Code, and which was held to apply it to pending actions, was enacted in 1851. (*See Laws of N. Y., for* 1851, *Tit.* "*Code of Procedure*," § 459.

Fourth Point. There being no ground of suit against LaFarge's executors, the right of suit against Louis E. Lahens is exclusively at law.

Wilkinson v. Henderson, 1 *Mylne & Keene*, 582.
Wilmer v. Currie, 2 *DeGex & Smales*, 352.
Other v. Ireson, 3 *Drewry*, 183.

The decree of the Circuit Court dismissing the Bill of Complaint should be affirmed, with costs of the appeal to the respondents.

T. J. GLOVER,
Sol'r for LaFarge's Exrs.
F. H. DYKERS,
Sol'r for L. E. Lahens.
FRANCIS KERNAN,
of Counsel.